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12027-D

February 5, 1981

Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20434

RECORDATION NO. 12027-D Filed 1428  
1-036A050  
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INTERSTATE COMMERCE COMMISSION  
Washington, D.C.

Dear Madam:

Enclosed for recordation under the provisions of 49 U.S.C. Section 11303 are the original and counterparts of the Amendment to and Restatement of Equipment Lease Agreement, dated as of February 2, 1981 (the "Restated Lease") amending and supplementing an Equipment Lease Agreement dated as of July 1, 1980 (the "Original Lease"), which Original Lease was filed with your office at 8:50 a.m. on July 23, 1980 and was assigned Recordation Number 12027.

A general description of the railroad rolling stock covered by the Lease is set forth in Schedule 1 - Description of Units attached to this letter and made a part hereof.

The names and addresses of the parties to the Lease are:

Lessor: United States Trust Company of New York,  
as Trustee under an Amended Trust  
Agreement dated as of June 15, 1980,  
as amended and restated by an Amended  
and Restated Trust Agreement dated as  
of February 2, 1981  
45 Wall Street  
New York, NY 10005

Lessee: XTRA Leasing, Inc.  
c/o X-L-Co., Inc.  
60 State Street  
Boston, Massachusetts 02109

The undersigned is an executive officer of the Lessee which is a party to the enclosed document and has knowledge of the matters set forth herein.

RECEIVED  
FEB 5 10 25 AM '81  
I.C.C.  
FEE OPERATION BR.

CT. Karpman

Please return the original copy and two counterparts of the Lease to Charles T. Kappler, Esq., Alvord and Alvord, Sixteenth Street, N.W., Washington, D.C. 20006.

Also enclosed is a check in the amount of \$10.00 covering the required recording fee.

Very truly yours,

XTRA LEASING, INC.

By EMER. VICE PRESIDENT  
Title

AMENDMENT TO AND RESTATEMENT OF  
EQUIPMENT LEASE AGREEMENT

5 1981 -11 25 AM

This Amendment to and Restatement of Equipment Lease Agreement, made on February 2, 1981 between XTRA LEASING, INC., a Delaware corporation ("Lessee"), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation, not in its individual capacity but solely as trustee under the Trust Agreement (as defined below) (in such capacity, "Lessor"),

INTERSTATE COMMERCE COMMISSION

W I T N E S S E T H :

WHEREAS, Lessor and Lessee have entered into an Equipment Lease Agreement, dated as of July 1, 1980, as amended and supplemented by Amendment No. 1 to Equipment Lease Agreement and Amendment No. 2 to Equipment Lease Agreement, both dated as of July 1, 1980, (the "Original Lease"); and

WHEREAS, Lessor and Lessee wish to further amend the Original Lease and to restate the Original Lease in its entirety;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt of which is hereby acknowledged, Lessor and Lessee hereby agree that, effective as of the date hereof, the Original Lease is hereby amended and restated to read in its entirety as set forth in Exhibit 1 hereto. Lessor and Lessee further agree that although this Amendment to and Restatement of Equipment Lease Agreement is dated for convenience as of the date first above written and regardless of its date of execution as indicated by the date or dates stated in the Acknowledgments annexed hereto, the actual date of effectiveness hereof shall be the effective date set forth below.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to and Restatement of Equipment Lease Agreement to be duly executed under their respective corporate seals by their respective officers thereunto duly authorized.

Effective Date: February , 1981

UNITED STATES TRUST COMPANY  
OF NEW YORK, not in its individual  
capacity but solely as Trustee as aforesaid

[Corporate Seal]

Attest:

Stephen J. Galt  
Title: Asst. Sec.

By Thomas B. Fitzgerald  
Title: Asst. Vice Pres.

[Corporate Seal]

Attest:

William D. Evans  
Title: Sec.

XTRA LEASING, INC.

By William D. Evans  
Title: EXEC. VICE PRESIDENT

To the extent, if any, that this Amendment to and Restatement of Equipment Lease Agreement or the Original Lease as amended hereby constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction) no security interest in this Amendment to and Restatement of Equipment Lease Agreement or in the Original Lease as amended hereby may be created through the transfer or possession of any counterpart of this Amendment to and Restatement of Equipment Lease Agreement or the Original Lease, other than the original executed counterpart hereof, which shall be identified as the counterpart containing the receipt therefor executed by the Loan Trustee (as defined in the Original Lease as amended hereby) on the acknowledgement page hereof.

STATE OF Massachusetts }  
COUNTY OF Suffolk } ss.:

On this 2nd day of February, 1981, before me personally appeared William B. Russell, to me personally known, who, being by me duly sworn, says that he is the Exec. Vice President of XTRA Leasing, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Annis T. Baker  
Notary Public

[Notarial Seal]

My commission expires: 12-27-85

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this 3rd day of February, 1981, before me personally appeared Thomas B. ZAKAZEWSKI, to me personally known, who, being by me duly sworn, says that he is an authorized officer of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Trustees, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Victoria Beddoe  
Notary Public

[Notarial Seal]

My commission expires:

VICTORIA BEDDOE  
NOTARY PUBLIC, STATE OF NEW YORK  
#24-4710477  
QUALIFIED IN KINGS COUNTY  
COMMISSION EXPIRES MARCH 30, 1982

# **EQUIPMENT LEASE AGREEMENT**

**Dated as of July 1, 1980**

**between**

**UNITED STATES TRUST COMPANY OF NEW YORK,  
not in its individual capacity but solely as Trustee,**

*Lessor*

**and**

**XTRA LEASING, INC.,**

*Lessee*

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**1016 100-Ton 4,700 or 4,750 Cubic  
Foot Covered Hopper Cars**

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## EQUIPMENT LEASE AGREEMENT

This **EQUIPMENT LEASE AGREEMENT**, dated as of July 1, 1980, between UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation, not in its individual capacity but solely as Trustee under the Trust Agreement, as defined in Section 1 hereof (herein, together with any successor Trustee then acting as such as permitted under the Trust Agreement, called "Lessor"), and XTRA LEASING, INC., a Delaware corporation (herein, together with its permitted successors and assigns, called "Lessee"),

### WITNESSETH:

Section 1. *Definitions.* (a) *General.* Unless the context shall otherwise require, (i) the following terms shall have the following meanings for all purposes of this Lease and (ii) such meanings shall be applicable to both the singular and the plural forms of the terms herein defined:

"*Appraisal Procedure*" shall mean the following procedure for determining the Fair Market Rental Value or the Fair Market Sales Value, as the case may be, of any property: If either party hereto shall have given written notice to the other requesting determination of such value by the Appraisal Procedure, the parties shall consult for the purpose of appointing one qualified independent appraiser by mutual agreement. If no such appraiser shall be so appointed within fifteen days after such notice shall have been given, each party shall appoint an independent appraiser (which shall not be a manufacturer of such property) within twenty-five days after such notice shall have been given, and the two appraisers so appointed shall within thirty days after such notice shall have been given appoint a third independent appraiser (which shall not be a manufacturer of such property). If no such third appraiser shall be so appointed within thirty days after such notice shall have been given, either party may apply to the American Arbitration Association (or any successor thereto) for the appointment of an arbitrator in the City of New York or such other city as shall be agreed upon by the parties, and both parties shall be bound by any appointment made by such Association. Each appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental Value or the Fair Market Sales Value, as the case may be, of the property in question within thirty days after his appointment. If the parties shall have appointed a single appraiser, his determination of value shall be final and binding. If three appraisers shall have been appointed as hereinabove set forth, the values determined by the three appraisers shall be averaged, the determination which shall differ most from such average shall be disregarded, the remaining two determinations shall be averaged, and such average shall be final and binding.

"*Basic Rent*" shall mean the rent payable pursuant to paragraph (a) of Section 3.

"*Business Day*" shall mean any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions shall be permitted or required by law or executive order to be closed in the city in which the Loan Trustee's Principal Corporate Trust Office is located or (iii) a day on which banking institutions in the State of New York shall be permitted or required by law or executive order to be closed.

2. "*Certificate of Acceptance*" shall have the meaning set forth in paragraph (b) of Section 2.

"*Delivery Date*" shall mean, with respect to any Unit, the date of delivery to and acceptance by Lessee of said Unit pursuant to the terms of this Lease and the terms of the Interim Participation Agreement.

"*Default Rate*" shall mean 16¾% per annum.

"*Event of Default*" shall have the meaning assigned thereto in Section 13.

"*Event of Loss*" shall mean, with respect to any Unit, any of the following events or conditions: (i) the destruction of such Unit, (ii) damage to such Unit to an extent which, in the judgment of Lessee, shall render repair impracticable or uneconomical, or (iii) the confiscation, theft or seizure of, or the requisition of title to or use of, such Unit, as shall result in the loss of use or possession of such Unit by Lessee for a period of ninety days or longer. Any determination to be made in the judgment of Lessee as referred to in clause (ii) of the immediately preceding sentence shall be evidenced by a certificate executed by any two Executive Officers of Lessee and delivered to Lessor, the Loan Trustee and each Participant; *provided, however*, that if at any time during any fiscal year the number of Units which are subject to an Event of Loss in such fiscal year equals or exceeds five percent of the number of Units at the beginning of such fiscal year, then, if requested by Lessor, the Loan Trustee or any Participant, no additional Unit shall be subject to an Event of Loss in such fiscal year under clause (ii) above unless Lessee shall have also furnished to the person making such request a certificate of an independent certified engineer, which engineer shall be satisfactory to, and which certificate shall be in form and substance satisfactory to, such person, and shall express the concurrence of such engineer in the judgment of the Lessee made pursuant to clause (ii) above.

"*Executive Officer*" shall mean the Chairman of the Board of Directors, the President, any Vice President or the Treasurer of any person.

"*Fair Market Rental Value*" shall mean the rent for the period or periods in question that would be agreed to in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to sell or lease.

"*Fair Market Sales Value*" shall mean the purchase price that would be agreed to in an arm's-length transaction between an informed and willing buyer-user (other than a user currently in possession or a used equipment scrap dealer) and an informed and willing seller under no compulsion to sell or lease.

"*Lease Payment Date*" shall mean May 5, 1981 and each May 5, August 5, November 5 and February 5 occurring thereafter during the Term.

"*Lessee*" shall mean XTRA Leasing, Inc., a Delaware corporation, and its permitted successors and assigns as lessee hereunder of the Units.

"*Lessor*" shall mean United States Trust Company of New York, not in its individual capacity but solely as Trustee under the Trust Agreement, and shall include any successor Trustee under the Trust Agreement.



*"Lien"* shall mean any interest in property securing an obligation owed to, or a claim by, any person other than the owner of the property, whether such interest shall be based on the common law, statute, contract or conveyance, and including, but not limited to, the security interest lien arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt, or from a lease, consignment or bailment for security purposes. Without limitation of the foregoing, the term *"Lien"* shall include reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting property. For the purposes of this Lease, a person shall be deemed to be the owner of any property which it shall have acquired or shall hold subject to a conditional sale agreement or other arrangement pursuant to which title to the property shall have been retained by or vested in some other person for security purposes.

*"Owner"* shall mean General Electric Credit Corporation, a New York corporation, and any permitted transferee of all or any part of the right, title and interest of the Owner in and to the Trust Agreement and the Trust Estate in accordance with Section 11 of the Trust Agreement and Section 11 of the Participation Agreement.

*"Participation Agreement"* shall mean the Participation Agreement, dated as of February 2, 1981, among Lessee, the Owner, Lessor, the Guarantor, the Lenders and the Loan Trustee, as originally executed and delivered, and as the same may from time to time be amended, supplemented or modified, in accordance with its terms.

*"Purchase Price"* shall mean, for each Unit, the price therefor certified as correct on the invoice covering such Unit delivered by the Manufacturer thereof pursuant to the Consent of such Manufacturer.

*"Renewal Term"* shall mean the term or terms referred to in paragraph (b) of Section 18.

*"Rent"* shall mean and include all Basic Rent and Supplemental Rent.

*"Stipulated Loss Value"* for each Unit, as of any Lease Payment Date, shall mean an amount determined by multiplying the Purchase Price of such Unit by the percentage specified in Schedule C hereof applicable to such Lease Payment Date; *provided*, that if the amount so determined is less than the Minimum Value at such date, the Stipulated Loss Value shall be such Minimum Value. For the purposes of this definition, the term *"Minimum Value"*, at any date, shall mean the principal of and interest on the Notes which would be required by the Indenture to be prepaid on such date as a result of the occurrence with respect to such Unit of an Event of Loss. During any Renewal Term, Stipulated Loss Value shall have the meaning set forth in paragraph (b) of Section 18.

*"Sublease"* shall have the meaning set forth in paragraph (c) of Section 8.

*"Supplemental Rent"* shall mean all amounts other than Basic Rent payable by Lessee hereunder, whether or not designated as "Supplemental Rent" in any particular provision hereof.

*"Term"* shall mean with respect to any Unit, the period commencing with the Delivery Date of such Unit pursuant to the Interim Participation Agreement or the Closing Date

under the Participation Agreement on which such Unit was delivered, as appropriate, and ending on February 5, 1996 or any earlier termination of this Lease with respect to such Unit, and shall include any Renewal Term.

*"this Lease"* shall mean this Equipment Lease Agreement as originally executed and delivered, and as this Equipment Lease Agreement is from time to time amended, supplemented or modified, in accordance with its terms and the respective terms of the Participation Agreement, the Trust Agreement and the Indenture. The terms *"hereof"*, *"hereby"*, *"hereunder"* and other words of similar import refer to this Lease as a whole, and not to any particular Section, paragraph or other subdivision.

*"Units"* shall mean and include all the standard-gauge covered hopper cars described in Schedule A hereto, which are from time to time subject to the provisions of this Lease, in each case together with any and all parts, instruments, appurtenances, accessories and other equipment and improvements of whatever nature from time to time incorporated in or installed as part of such Units.

(b) *Reference to Participation Agreement.* Unless the context shall otherwise require, for all purposes of this Lease the following terms shall have the meanings set forth in the Participation Agreement: *"Closing Date"*, *"Consent"*, *"Federal Bankruptcy Code"*, *"First Closing Date"*, *"Guarantor"*, *"Guaranty"*, *"Indenture"*, *"Indemnity Agreement"*, *"Interim Participation Agreement"*, *"Lenders"*, *"Loan Trustee"*, *"Manufacturer"*, *"Notes"*, *"Officer's Certificate"*, *"Operative Documents"*, *"Participants"*, *"person"*, *"Purchase Orders"*, and *"Trust Agreement"*.

(c) *Reference to Trust Agreement.* Unless the context shall otherwise require, for all purposes of this Lease the term *"Trust Estate"* shall have the meaning set forth in the Trust Agreement.

(d) *Reference to Indemnity Agreement.* Unless the context shall otherwise require, for all purposes of this Lease the term *"Net Return"* shall have the meaning set forth in the Indemnity Agreement.

(e) *Reference to Indenture.* Unless the context shall otherwise require, for all purposes of this Lease the terms *"Principal Corporate Trust Office"*, as applied to the Loan Trustee, and *"Trust Indenture Estate"* shall have the respective meanings set forth in the Indenture.

Section 2. *Lease of Units.* (a) *Intent to Lease and Hire.* Upon delivery of any Unit by the Manufacturer thereof in accordance with the Interim Participation Agreement or the Participation Agreement, and subject to the terms and conditions of this Lease, Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, such Unit, in each case for the Term with respect thereto.

(b) *Inspection and Acceptance.* Lessor will cause each Unit to be tendered to Lessee at the place of delivery set forth in the related Purchase Order. In connection with such tender, Lessor hereby appoints Lessee as agent for Lessor. Lessee, as such agent, will cause an inspector or inspectors designated and authorized by Lessee to inspect the same, and, if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to Lessor and the Manufacturer thereof a Certificate of Acceptance (a "Certificate of

Acceptance") in the form attached hereto as Schedule B with respect to such Unit; *provided, however*, that Lessee shall not accept any Unit tendered for delivery after May 5, 1981 unless it shall have been directed to do so in writing by Lessor prior to such tender for delivery of such Unit and Lessor shall have no obligation to lease any such Unit to Lessee unless it shall have so directed Lessee to accept delivery thereof.

(c) *Certificate of Acceptance.* Lessee's execution and delivery of a Certificate of Acceptance with respect to any Unit pursuant to paragraph (b) of this Section 2 shall conclusively establish that, as between Lessor and Lessee, but without limiting or otherwise affecting Lessee's or Lessor's rights, if any, against the Manufacturer thereof, such Unit is acceptable to and accepted by Lessee under this Lease, notwithstanding any defect with respect to design, manufacture or condition or in any other respect, and that such Unit is in good order and condition and conforms to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the same character as the Units as of the date of the execution and delivery of said Certificate of Acceptance.

Section 3. *Rent.* (a) *Basic Rent.* Lessee hereby agrees to pay to Lessor Basic Rent during the Term, in immediately available funds, in sixty consecutive quarter annual installments, in arrears, commencing on May 5, 1981 and payable on each Lease Payment Date thereafter (including any Lease Payment Date on which Stipulated Loss Value is to be paid in accordance with the provisions of this Lease) to and including the Lease Payment Date that is the last day of the Term, each such installment to be in an amount equal to 3.03232% ~~3.0322%~~ of the Purchase Price of each Unit; *provided, however*, that in the case of any Unit delivered after February 5, 1981, the Basic Rent payable on May 5, 1981 with respect to such Unit shall be an amount per day (computed on the basis of a 360-day year of twelve 30-day months) for the period from and including the Closing Date for such Unit to but not including May 5, 1981, equal to .0337% of the Purchase Price of such Unit; and *provided, further*, that during any Renewal Term each such installment shall be in the amount determined pursuant to paragraph (b) of Section 18.

(b) *Supplemental Rent.* Lessee hereby agrees to pay to Lessor, or to whosoever shall be entitled thereto as provided herein, any and all Supplemental Rent promptly as the same shall become due and owing, and in the event of any failure on the part of Lessee so to pay any Supplemental Rent, Lessor shall have all rights, powers, privileges and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of other kinds of Rent. Lessee will pay to Lessor, upon demand, as Supplemental Rent, to the extent not prohibited by applicable law, interest at the Default Rate on any part or installment of Basic Rent not paid when due for any period for which the same shall be overdue, and will pay upon demand, to the extent not prohibited by applicable law, interest at the Default Rate on any part of any payment of Supplemental Rent (other than (i) such interest on delinquent payments, (ii) any payment of Supplemental Rent as to which interest to the date of payment is expressly provided for elsewhere in this Lease and (iii) any payment of Supplemental Rent required by this Lease to be made to any governmental authority (any interest on, or penalty in respect of, payments to any governmental authority required to be made by Lessee under this Lease being payable by Lessee as Supplemental Rent)) due

hereunder and not paid when due for any period for which the same shall be overdue, such payment to be made to the person to receive the overdue Supplemental Rent in respect of which such interest is to be paid.

(c) *Adjustment of Rent.* If (i) a number other than 1,016 Units are delivered under and become subject to this Lease, or (ii) the Units are not delivered and funded in accordance with the schedule set forth in Exhibit A hereto, the Basic Rent and Stipulated Loss Values shall be increased, if necessary to reflect such change in number and/or change in delivery and funding so as to preserve the Owner's Net Return.

(d) *Reduction of Rent.* Lessor and Lessee covenant and agree that Lessor and Lessee shall not, without the written consent of the Loan Trustee, agree to a reduction in the Basic Rent or Stipulated Loss Values.

Section 4. *Net Lease; Non-Terminability.* This Lease is a net lease, and it is intended, understood, acknowledged and agreed that Lessee will pay all costs, charges, fees, assessments, expenses and taxes (other than taxes solely based on or measured by the net income of, or based on items of tax preference of, any Indemnatee (as defined in Section 7)) of every character, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the manufacture, construction, installation, delivery, ownership, lease, transportation, use, operation, maintenance, repair, service, insurance, replacement, restoration, renewal, improvement and return of the Units.

The Rent which Lessee is or shall be obligated to pay shall be paid without notice or demand, and shall not be affected by any circumstances (except payment), including, without limitation, (i) any set-off, counterclaim, recoupment, abatement, suspension, deduction or defense or other right, power, privilege, remedy or immunity which Lessee may have against or in respect of Lessor, the Loan Trustee, any Participant, one or more Manufacturers or anyone else for any reason whatsoever, (ii) any defect in the title, merchantability, compliance with specifications, condition, design, operation or fitness for use of, or any damage to or loss of possession or use or destruction of, any or all of the Units or any portion thereof, from whatsoever cause, including, without limitation, confiscation, requisition or other taking by any governmental authority, any person acting under governmental authority, any Liens with respect to any of the Units or otherwise, (iii) any failure to commence, or interruption or cessation in, the use, possession or operation by Lessee of any or all of the Units or any portion thereof by reason of the action of any public or private person, whether by eviction by paramount title or for any other reason whatsoever, (iv) any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or other proceeding by or against Lessee or the Guarantor or affecting any of their respective property, (v) the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or the invalidity, illegality or unenforceability of any of the Operative Documents or any Notes, or any other infirmity hereunder or thereunder, or any lack of power or authority of Lessor or any other person to enter into, or perform in accordance with the terms of, any of the Operative Documents or any Notes, or (vi) any other circumstances or happenings whatsoever, whether or not similar to any of the foregoing, it being the intention, understanding and agreement of the parties hereto, and the basis of the bargain, that the obligations of Lessee hereunder shall be absolute and unconditional, shall

be separate and independent covenants and agreements and shall continue unaffected unless and until the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease. Lessee hereby waives, to the extent permitted by applicable law, any and all rights, powers, privileges, remedies or immunities against or in respect of Lessor which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease or any part or to the abatement, suspension, deferment, diminution or reduction of Rent except in accordance with the express terms hereof. Each Rent payment made by Lessee shall be final, and Lessee does not and shall not have any right or power, and will not seek, to recover all or any part of such payment for any reason whatsoever.

Lessee covenants that it will remain obligated under this Lease in accordance with its terms, and will not take any action to terminate (except in accordance with the express provisions hereof), rescind or avoid this Lease for any reason, notwithstanding any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or other proceeding affecting Lessor or the Owner, or any property of Lessor or the Owner, or any action which may be taken by any receiver, trustee or liquidator (or other similar official) or by any court.

Lessee agrees that, if any proceeding shall be brought for the foreclosure of the Indenture and if the Trust Indenture Estate shall be sold pursuant to such foreclosure of the Indenture, so long as the purchaser under such foreclosure proceeding assumes the obligations of Lessor, Lessee will, in the event that this Lease shall not, prior to such sale, have been terminated or have expired in accordance with its terms, attorn to the purchaser upon any such sale at foreclosure or otherwise, including the Loan Trustee if it should be the purchaser of the Trust Indenture Estate, and will recognize such purchaser as Lessor under this Lease, and this Lease shall continue in full force and effect as a direct lease between Lessee and such purchaser upon and subject to all the terms, covenants, conditions and agreements set forth in this Lease. Lessee agrees that it will execute and deliver, at any time and from time to time, upon the request of the Loan Trustee or any such purchaser, any agreement, instrument or other document which, in the judgment of the party making such request, may be necessary or appropriate in any such foreclosure proceeding, or otherwise, to evidence such attornment.

Lessee agrees that it will duly perform and observe all the covenants, agreements and obligations on its part to be performed and observed under the Participation Agreement and under each of the other Operative Documents to which it is a party.

Section 5. *Inspection and Reports.* (a) *Condition and Operation.* If (i) no Event of Default shall have occurred and be continuing, and (ii) this Lease shall not have been previously terminated with respect thereto, or have expired, Lessee shall have all rights of possession and use of and with respect to the Units, free and clear of acts of, claims against, or claims which secure obligations of, Lessor (or persons claiming through Lessor) arising out of transactions other than those contemplated by the Operative Documents. Notwithstanding the foregoing, at all reasonable times Lessor, the Loan Trustee and each Participant, and their respective authorized representatives, may at their own expense inspect the Units and inspect and make copies of the books and records of Lessee relative thereto. At such times and in such detail as Lessor, the Loan Trustee, any Participant or any

such representative may reasonably request (and, in any event, within 120 days after the end of each fiscal year of Lessee, commencing with the fiscal year of Lessee ending on September 30, 1981) Lessee will furnish Lessor, the Loan Trustee and each Participant with an Officer's Certificate of Lessee, dated not more than 60 days prior to the date of the delivery of such certificate, (i) stating the number of Units then covered by this Lease, (ii) stating the number of Units then under sublease and describing (w) the sublessees thereunder, (x) the Units (identified by car number) covered by each Sublease, (y) the term of each such Sublease and (z) the periodic rental payments due under each such Sublease, (iii) stating the number of Units (identified by car number) that have suffered an Event of Loss during the most recently completed fiscal year (or, in the case of the first such Officer's Certificate, during the period from the date of the original execution and delivery of this Lease to and including the end of said most recently completed fiscal year), (iv) stating that each Unit is in the condition or is undergoing the repair required under paragraph (a) of Section 8, (v) identifying by car number each Unit which is currently (x) undergoing repairs reasonably estimated to cost \$10,000 or more or (y) withdrawn from use for such repairs, (vi) stating that the marks required by paragraph (b) of Section 8 have been preserved or replaced, as the case may be, as required thereby, (vii) stating that, during the most recently completed fiscal year (or, in the case of the first such Officer's Certificate, during the period from the date of the original execution and delivery of this Lease to and including the end of said most recently completed fiscal year), Lessee has complied with the provisions of paragraph (d) of Section 8, (viii) listing those Subleases which were terminated since the date of the last such Officer's Certificate (or, in the case of the first such Officer's Certificate, the period from the date of the original execution and delivery of this Lease to and including the end of said most recently completed fiscal year) other than in accordance with their respective terms and (ix) covering such other matters relating to the condition, status and location of the Units as Lessor, the Loan Trustee, such Participant or such representative may reasonably request. In addition, promptly after the number of Units subject to an Event of Loss in any fiscal year equals or exceeds five percent of the number of Units at the beginning of such fiscal year, Lessee will furnish Lessor, the Loan Trustee and each Participant with an Officer's Certificate of Lessee to such effect. Neither Lessor, the Loan Trustee nor any of the Participants shall have any duty to make any such inspection or inquiry, and shall not incur any liability or be deemed to assume any responsibility by reason of failing or refusing to make or complete any such inspection or inquiry.

Not later than 90 days after the delivery of the Officer's Certificate referred to in the immediately preceding paragraph, Lessee will furnish Lessor, the Loan Trustee and each of the Participants with a supplemental certificate of the director of purchasing and engineering of Lessee or other qualified engineer satisfactory to Lessor and the Loan Trustee identifying by car number each Unit referred to in clause (v) of the immediately preceding paragraph and, as to each such Unit, certifying that such Unit is in the condition or undergoing the repairs required by paragraph (a) of Section 8 as of the date of such supplemental certificate. If such supplemental certificate shall not be delivered on or prior to the last date specified for such delivery in the preceding sentence (or within 10 days after written notice of such failure to deliver by Lessor to Lessee), such Unit shall (upon written notice by Lessor to Lessee) be deemed to have suffered an Event of Loss.

Lessee will, at its own expense and to the extent not prohibited under applicable law or regulation, prepare and file in timely fashion, or, where Lessor shall be so required to file, prepare and deliver to Lessor within a reasonable time prior to the date for filing, any

reports with respect to the condition, use or operation of any Unit or Units during any period included in the Term with respect thereto which are required to be filed with any governmental authority.

(b) *Liens.* Lessee will notify Lessor, the Loan Trustee and each Participant, within ten days after Lessee shall have become aware of the same, as to (i) any Lien (except Liens expressly permitted under clause (i) of Section 6) that shall have attached to any Unit, (ii) the full particulars thereof and (iii) the action, if any, taken or proposed to be taken by Lessee in respect thereof.

(c) *Default Notice.* Lessee agrees that it will, promptly upon any Responsible Officer's becoming aware of any event or condition which constitutes an Event of Default, or which, after notice or the passage of time, or both, would constitute an Event of Default, furnish Lessor, the Loan Trustee and each Participant with a written notice specifying such event or condition, the nature and status thereof and the action taken or proposed to be taken by Lessee in respect thereof. For the purposes of this paragraph, a "Responsible Officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of Lessee in this Lease contained, any corporate officer or assistant officer of Lessee who, in the normal performance of his operational responsibilities, does or should have knowledge of such matter and the requirements of this Lease with respect thereto.

(d) *Liability.* Lessee will notify Lessor and the Loan Trustee of each accident arising out of the allegedly or apparently improper construction, functioning, installation or operation of any Unit or Units, promptly upon Lessee's becoming aware of the same, and, on request by Lessor will furnish Lessor with information, to the extent that such information is known to Lessee, as to the time, place and nature thereof, the names and addresses of the parties involved, any persons injured, witnesses and owners of any property and such other information as may be known to it, and shall, promptly upon request by Lessor, furnish Lessor with copies of all correspondence, papers, notices and other documents whatsoever prepared or received by Lessee in connection therewith; *provided, however,* that the notice requirements of this paragraph (d) shall only apply with respect to any accident which results in a claim or demand asserted in writing, or a cause of action or suit, for damages of more than either (A) \$250,000 in excess of the insurance coverage maintained by Lessee with respect to such accident pursuant to paragraph (b) of Section 11 of this Lease or (B) \$1,000,000.

(e) *Financial Information.* Lessee agrees to deliver (or cause to be delivered) to the Owner, Lessor, the Loan Trustee, each Lender (so long as it or its nominee shall hold any Note) and each subsequent bank or institutional holder of any Note the following financial statements and information at the respective times specified below:

(i) *Annual Statements.* As soon as practicable after the end of each fiscal year of Lessee and in any event within 120 days thereafter, duplicate copies of a balance sheet of Lessee as of the end of such fiscal year and statements of income, stockholders' equity and changes in financial position of Lessee for such fiscal year, setting forth, in each case in comparative form, the figures for the previous fiscal year, all in reasonable detail compiled from the records of Lessee without audit by independent certified public accountants of recognized national standing selected by Lessee, such statements being certified by the principal financial officer of Lessee as complete and correct as of the respective dates thereof;

(ii) *Quarterly Statements.* As soon as practicable after the end of each fiscal quarter (other than the fourth fiscal quarter) of Lessee and in any event within 90 days thereafter, duplicate copies of a balance sheet of Lessee as of the end of such fiscal quarter and a statement of income of Lessee for such fiscal quarter and (in the case of the second and third fiscal quarters) for the portion of the fiscal year ending with such fiscal quarter, setting forth, in each case in comparative form, the figures for the corresponding periods in the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by the principal financial officer of Lessee;

(iii) *Certificate of Lessee.* With each set of financial statements delivered pursuant to subparagraphs (i) and (ii) above, an Officer's Certificate of Lessee certifying that the signer has reviewed the relevant terms of the Operative Documents, and has made, or caused to be made under his supervision, a review of the transactions and condition of Lessee from the beginning of the accounting period covered by the statements of income being delivered therewith to the date of the certificate, and that such review has not disclosed the existence during such period of any Event of Default (or any event or condition which, after notice or the passage of time or both, would constitute such an Event of Default) or, if any such Event of Default (or other such event or condition) existed or exists, specifying the nature and period of existence thereof and the action taken or proposed to be taken with respect thereto;

(iv) *Requested Information.* With reasonable promptness, such other data and information as from time to time may be reasonably requested by any bank or institutional holder of an outstanding Note, any Lender, the Owner, Lessor or the Loan Trustee; and

(v) *Accountants' Certificate.* Upon the request of the Loan Trustee exercised by written notice to Lessee not later than 30 days before the end of the relevant fiscal year, the financial statements delivered pursuant to subparagraph (i) above shall be accompanied by an opinion thereon of independent certified public accountants of recognized national standing selected by Lessee, which opinion shall state that such financial statements fairly present the financial condition of Lessee, have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountants concur) and that examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances.

Section 6. *Liens.* LESSEE SHALL NOT HAVE ANY RIGHT, POWER, PRIVILEGE OR AUTHORITY TO CREATE OR INCUR ANY LIEN UPON LESSOR'S INTEREST IN THE UNITS. NOTICE IS HEREBY GIVEN TO ALL CONTRACTORS, SUBCONTRACTORS, LABORERS, MATERIALMEN AND OTHER PERSONS THAT LESSOR WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED TO LESSEE AND THAT NO LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT LESSOR'S INTEREST IN THE UNITS.



Lessee will not, directly or indirectly, create, incur, assume or suffer to exist any Lien on or with respect to any Unit, any part thereof, the title thereto or any interest therein, except (i) the respective rights of Lessee, Lessor, the Loan Trustee, and each Participant as provided in the Operative Documents, (ii) Liens which shall result from acts of or claims against, or which secure obligations of, Lessor (or persons claiming through Lessor), (iii) Liens permitted under the provisions of paragraph (c) of Section 8 or paragraph (c) of Section 9, (iv) Liens for taxes either not yet due or being contested in accordance with the provisions of Section 15 so long as such contests shall not interfere with the payment or receipt and retention of Rent, (v) materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business, which shall not be delinquent, or which shall have been bonded, or the enforcement of which shall have been suspended (but then only for the duration of such suspension) and (vi) Liens arising out of judgments or awards against Lessee which shall have been bonded or which Lessee shall be contesting in accordance with the provisions of Section 15. Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien not excepted above if the same shall arise at any time.

Section 7. *General Indemnity for Taxes.* All payments to be made by Lessee hereunder will be free of expense to Lessor, in both its individual and fiduciary capacities, the Loan Trustee and each Participant and their respective successors and assigns (the "Indemnitees") for collection or other charges and will be free of expense to the Indemnitees with respect to any Impositions as hereinafter defined, and Lessee hereby assumes responsibility for, and agrees to pay, hold harmless and indemnify the Indemnitees against, all such Impositions and collection or other charges. As used in this Section 7, "Impositions" shall mean the amount of any local, state, Federal or foreign taxes, fees, withholdings, levies, imposts, duties, assessments, charges, license and registration fees and other governmental charges of any nature whatsoever, either domestic or foreign, including without limitation penalties, fines, additions to tax and interest thereon, however imposed, imposed on, incurred by or asserted against any Indemnatee or the Units on account of, or with respect to, this Lease, the Participation Agreement or any other Operative Document or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any part or portion thereof or the ownership, delivery, non-delivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; *provided, however*, that Impositions shall not include as to each respective Indemnatee (i) any taxes imposed on or measured by any trustee fees received by Lessor, (ii) Federal income taxes measured solely by net income or excess profits of, or based on items of tax preference of, Lessor (in its individual capacity) or any Participant, or (iii) taxes measured solely by net income or excess profits or based on items of tax preference of, and franchise taxes imposed on, Lessor (in its individual capacity), or its successors and assigns by the respective entity's state of incorporation or state where its principal place of business is located; and, *provided, further*, that nothing stated herein shall prevent Lessee from entering into a separate indemnity agreement pertaining to taxes with the Owner. Lessee shall pay all Impositions for which it assumes liability hereunder when such Impositions are due and will indemnify each Indemnatee to the extent required by this

Section 7 within fifteen Business Days after receipt of a request by such Indemnitee for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Impositions in question.

In the event any returns, statements or reports with respect to Impositions are required to be made, Lessee will make such returns, statements or reports in such manner as to show the interest of Lessor in the Units; *provided, however*, that Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file such returns, statements and reports relating to sales or use taxes, and taxes, fees and charges on or measured by Lessor's gross receipts arising from the Units, as Lessee shall determine are required to be filed, and as shall be prepared by Lessee, and Lessor shall remit the amount thereof upon payment by Lessee to Lessor (such payment to be made forthwith upon demand by Lessor therefor) of such taxes, fees and charges, except as provided above. All costs and expenses (including legal and accounting fees) of preparing such returns, statements or reports shall be borne by Lessee.

Lessee shall, whenever reasonably requested by Lessor, submit to Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to Lessor, of Lessee's performance of its duties under this Section 7. Lessee shall also furnish promptly upon request such data as Lessor reasonably may require to permit Lessor's compliance with the requirements of any taxing jurisdiction.

Lessee agrees to pay all amounts due under this Section 7 free of any Impositions and to indemnify each Indemnitee against any Impositions by reason of any payment made by Lessee so that the Indemnitee to whom or for whose benefit the payment is made shall receive an amount which, net of any Impositions or other charges required to be paid by such Indemnitee in respect thereof, shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which Lessee shall be required to pay with respect to any Impositions subject to indemnification under this Section 7 shall be an amount sufficient, after considering the tax effects of the Impositions in question and the receipt of indemnification payments hereunder, to provide the Indemnitee with the same anticipated after-tax return on equity and periodic recovery of net cash flow and timing of recognition of income as such Indemnitee would have realized had such Impositions not been incurred or imposed.

In the event that, during the Term, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to any period of time during the Term) which Lessee is or will be obligated to pay or reimburse pursuant to this Section 7, such liability shall continue, notwithstanding the expiration or earlier termination of this Lease, until all such Impositions are paid or reimbursed by Lessee.

All amounts payable by Lessee pursuant to this Section 7 shall be paid directly to the Indemnitee which such payment is intended to benefit, except for amounts payable to any government or taxing authority.

Section 8. *Maintenance, Marking, Possession, Sublease, Location and Use and Return of Units.* (a) *Maintenance and Operation.* Lessee, at its own expense, will maintain, service and repair the Units (or cause the same to be maintained, serviced and repaired) to the same extent as Lessee would, in the prudent management of its properties, maintain,

service and repair comparable equipment (if owned by Lessee) and, in any event, to the extent necessary to maintain the Units in as good repair, working order and operating condition as when delivered, ordinary wear and tear excepted, eligible for railroad interchange in accordance with the rules of the Association of American Railroads, and in compliance with any applicable requirements of law or of any governmental authority having jurisdiction (regardless of the person upon whom such requirements shall, by their terms, be nominally imposed). Lessee will not permit the Units to be used or operated in violation of any law, or of any rule, regulation or order of any governmental authority having jurisdiction, unless Lessee shall be contesting the validity thereof in good faith and by appropriate proceedings, but only so long as such proceedings shall not involve any danger of the sale, forfeiture or loss of any Unit or interest therein, and shall not result in, or involve any substantial possibility of resulting in, the creation of any Lien on or with respect to any Unit or interest therein, which is not permitted under the provisions of Section 6. Lessee will comply with all applicable maintenance, service, repair and overhaul manuals and service bulletins published by or on behalf of the Manufacturers or cause the same to be complied with. Lessee will maintain or cause to be maintained all records, logs and other materials required by any governmental authority having jurisdiction to be maintained in respect of the Units, regardless of whether such requirements shall, by their terms, be nominally imposed on Lessor, the Loan Trustee or any Participant or their respective successors and assigns.

Lessee, at its own expense, will procure and pay for all permits, franchises, inspections and licenses necessary or appropriate in connection with the Units, the use or operation thereof or any repair, restoration, replacement, renewal, addition or improvement with respect thereto.

Lessor shall not be required to maintain, service or repair, or to make any repair, restoration, replacement, renewal, addition or improvement of any nature or description with respect to, the Units, or, except to the extent specifically provided herein, to incur any cost or expense in connection with this Lease. Lessee expressly waives any right, power, privilege or remedy, now or hereafter conferred by statute or otherwise, to make any repairs, restorations, replacements, renewals, additions or improvements with respect to the Units at the expense of Lessor.

(b) *Marking.* Lessee will cause each Unit to be, and to continue to be, marked with the identifying number related to such Unit set forth in Schedule A hereto, and will cause each Unit to be, and to continue to be, marked with the following words, in plain, distinct and conspicuous lettering appearing in a prominent place upon each side of each Unit, in letters not less than one inch in height: "Leased from a Bank or Trust Company, as Trustee. Subject to Documents on File with the I.C.C." with appropriate changes thereof as from time to time may be required by law, in the opinion of Lessor and the Participants, in order to protect Lessor's title to and the Loan Trustee's security interest in such Unit and the rights of Lessor under this Lease and the rights of the Loan Trustee under the Indenture. Lessee will promptly replace any such identifying number or any letters of any such words which may be removed, defaced or destroyed. The Units may be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates or sublessees under subleases permitted under paragraph (c) of this Section 8; *provided, however*, that Lessee will not

allow the name of any person other than Lessor and the Loan Trustee to be placed on any Unit as a designation that might reasonably be interpreted as a claim of ownership thereof. Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Lessor and duly filed and deposited by Lessee in all public offices where this Lease or the Indenture shall have been filed and deposited and (ii) Lessee shall have furnished Lessor, the Loan Trustee and each Participant with an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect Lessor's and the Loan Trustee's respective rights in such Units and that no other filing, deposit or giving of notice with or to any Federal, state, provincial or local government or agency thereof is necessary to protect the rights of Lessor and the Loan Trustee in such Units.

(c) *Possession; Sublease; Security Interests.* This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee pursuant to the Indenture or Section 10 of the Trust Agreement. Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. All the rights of Lessor hereunder shall inure to the benefit of Lessor's successors and assigns. Lessee will not assign, encumber, transfer or otherwise dispose of, or sublease, any of its interests under this Lease or relinquish possession of any Unit, except that (x) Lessee may take any action permitted by Section 19, (y) unless an Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing, Lessee may deliver or relinquish possession of any Unit, or part thereof, to any responsible person in the United States (or, if damaged outside of the United States, in the jurisdiction where damaged) for the purposes of warranty performance, replacement or repair (*provided*, that the rights of any person who shall receive possession of any such Unit or part shall be subject to all the terms of this Lease), and (z) unless an Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing, Lessee may enter into subleases (the "Subleases") of a Unit or Units, subject to the following provisions:

(i) If, with respect to any Sublease, either (A) the Sublease requires Lessee to maintain at its expense the Units subject thereto, the term (including any extensions or renewals which are solely at the option of the sublessee) is greater than five years, and the amount of rent payable by the sublessee in respect of any Unit subject to such Sublease on a quarterly basis is less than 3.6% of the Purchase Price of such Unit or (B) on the date on which such Sublease is entered into the amount of rent payable by the sublessee in respect of any Unit on a quarterly basis is less than the applicable percentage of the Purchase Price of such Unit set forth in the table below:

<u>Date</u>	<u>Applicable Quarterly Percentage</u>
Prior to February 5, 1982	3.0
After February 4, 1982 and prior to February 5, 1983	3.06
After February 4, 1983 and prior to February 5, 1984	3.12

<u>Date</u>	<u>Applicable Quarterly Percentage</u>
After February 4, 1984 and prior to February 5, 1985	3.18
After February 4, 1985 and prior to February 5, 1986	3.24
After February 4, 1986 and prior to February 5, 1987	3.30
After February 4, 1987 and prior to February 5, 1988	3.36
After February 4, 1988 and prior to February 5, 1989	3.42
After February 4, 1989 and prior to February 5, 1990	3.48
After February 4, 1990 and prior to February 5, 1991	3.54
February 5, 1991 and thereafter	3.60

then the sublessee under each such Sublease shall expressly agree that its rights in such Sublease are subject and subordinate to the rights of Lessor hereunder and that, with respect to the Units subject to said Sublease, upon an Event of Default (as defined hereunder) Lessor shall have the right to take possession of said Units free and clear of any rights of the sublessee under the Sublease.

(ii) Lessee hereby mortgages, pledges, assigns, transfers and sets over unto Lessor and hereby creates a security interest in Lessor, and agrees to mortgage, pledge, assign, transfer and set over unto Lessor and to create a security interest in Lessor, as security for the payment and performance of all of Lessee's obligations under this Lease, the following: (a) all Lessee's right, title and interest as sublessor in, to and under all Subleases, together with all rights, powers, privileges and other benefits of Lessee as sublessor under the Subleases, including but not limited to Lessee's right to receive and collect all rentals, liquidated damages and other payments to become payable to or receivable by Lessee under or pursuant to the provisions of the Subleases and, in addition, (b) all of Lessee's right to receive and collect all per diem mileage or other payments now or hereafter to become payable to Lessee in respect of all Units, whether under or pursuant to the provisions of any of the Subleases or otherwise. Lessor hereby appoints Lessee its agent to collect and receive any and all of such rentals and other payments and to take any and all actions in respect of the Subleases until the happening of an Event of Default. If, after the occurrence and continuation of an Event of Default, any such rentals or other payments are received by Lessor, Lessor agrees to remit said rentals and other payments to the Loan Trustee in the original form received. Lessee represents and warrants that it has not heretofore made and agrees that it will not hereafter make any other assignment of the Subleases or the rentals or the payments payable to or receivable by Lessee under any of the Subleases.

(iii) Except with respect to Subleases that are subordinated to the rights of Lessor pursuant to subparagraph (i) of this paragraph (c) of Section 8 (the "Subordinated

Subleases"), it is expressly understood and agreed that the rights hereby assigned to Lessor are subject to the rights of sublessees under the Subleases, and that Lessor, so long as any such sublessee is not in default under its Sublease, shall not interfere with the rights of peaceful and undisturbed possession of such sublessee in and to any of the Units in accordance with the terms of such Sublease.

(iv) In addition to, and without in any way limiting, the powers conferred upon Lessor by this Lease, Lessor may upon the happening of an Event of Default and not otherwise, in Lessor's own name or in the name of Lessor's nominee, or in the name of Lessee or as Lessee's attorney (x) ask, demand, sue for, collect and receive any and all rentals or per diem mileage or other payments to which Lessee is or may become entitled under the Subleases and (y) enforce compliance by sublessees under the Subleases with all the terms and provisions thereof and make all waivers and agreements, give all notices, consents and releases, take all action upon the happening of an event of default under the Subleases, and do any and all other things whatsoever which Lessee, as sublessor, is or may become entitled to do under the Subleases.

(v) The assignment made by this instrument is made only as security and, therefore, shall not subject Lessor to, or transfer, or pass or in any way affect or modify, the liability of Lessee under any Sublease or otherwise, it being expressly understood and agreed that, notwithstanding such assignment, any obligations of Lessee under any Sublease or otherwise shall be and remain enforceable against and only against Lessee.

(vi) Lessee covenants and agrees with Lessor that in any suit, proceeding or action brought by Lessor pursuant to the provisions of this Lease for any rentals or per diem mileage or other payments, whether under or pursuant to the provisions of any Sublease or otherwise, or to enforce any provisions of any Sublease, Lessee will save, indemnify and keep Lessor harmless from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever.

(vii) Except with respect to Subordinated Subleases, each Sublease shall specifically provide (and each such Sublease theretofore entered into shall, on or before March 5, 1981, be amended to so provide) that the sublessee thereunder consents and agrees to the assignment above provided and to the subsequent assignment to the Loan Trustee of Lessor's interest in such Sublease pursuant to the Indenture and that upon written notice from Lessor or Lessor's assignee it will make all rent and other payments under the Sublease directly to Lessor or Lessor's assignee. No Sublease may provide for a purchase option or other similar right.

(viii) Lessee will cause each Sublease promptly to be filed, registered and recorded (and any such filing, registration and recording to be continued in effect) to such extent, in such manner and in such places as may be necessary or appropriate in order to publish notice of and fully to preserve and protect the validity and priority of the assignment of such Sublease as provided above and the subsequent assignment to the Loan Trustee of Lessor's interest in such Sublease pursuant to the Indenture and from time to time will perform or cause to be performed any and all other actions, and will execute and deliver or cause to be executed and delivered and filed, registered and recorded any and all other documents, that may be necessary or appropriate under applicable law for such publication, preservation and protection. Lessee will pay or cause to be paid all filing, registration and recording taxes

and fees incident to such filing, registration and recording; *provided, however*, that Subordinated Subleases and Subleases with a term (including any extensions or renewals which are solely at the option of the sublessee) not greater than one year need not be filed with the Interstate Commerce Commission.

(ix) Lessee will not receive or collect or permit or suffer the receipt or collection nor will Lessee modify any Sublease, if such modification has the effect of permitting the receipt or collection, of any payment under any Sublease prior to the date for the payment thereof provided for by such Sublease.

(x) Lessee will duly and punctually perform and observe all covenants and agreements on its part to be performed and observed under any Sublease, and will enforce due and punctual performance and observance by the sublessee under such Sublease of all covenants and agreements on the sublessee's part to be performed and observed under such Sublease.

(xi) On or before March 5, 1981, with respect to Subleases theretofore entered into, and within 60 days after the end of each fiscal quarter of Lessee in which an additional Sublease is entered into, Lessee will deliver to Lessor, the Loan Trustee and each of the Participants an opinion of counsel for Lessee (which counsel may be the Guarantor's or Lessee's general counsel), with respect to such Sublease (having attached thereto a copy of such Sublease), in form and scope satisfactory to each Participant, substantially to the effects set forth in paragraphs 11 and 12 of the opinion of counsel set forth in Schedule A-1 to the Participation Agreement (subject to such exceptions reasonably satisfactory to the Participants) and to such further effects as any Participant may reasonably request; *provided, however*, that no such opinion shall be required with respect to any Sublease which is a Subordinated Sublease or any Sublease with a term (including any extensions or renewals which are solely at the option of the sublessee) not greater than one year.

(xii) Lessee will not enter into any Sublease with a sublessee incorporated in a jurisdiction other than the United States or Canada if, after entering into said Sublease, more than 20% of the Units would be subleased to sublessees incorporated in jurisdictions other than the United States or Canada.

(xiii) If an Event of Default shall have occurred and be continuing hereunder, Lessee will not, without the prior written consent of the Loan Trustee, declare a default or exercise any rights (including options), powers, privileges or remedies of the sublessor or take or authorize the taking of any action to amend, supplement, terminate, modify or accept a surrender of, or offer or agree to any amendment, supplement, termination or modification or surrender of any Sublease.

(d) *Location and Use.* Lessee will not permit, in any fiscal year of said Lessee, the number of Unit-days usage in jurisdictions in which the right, title and interest of Lessor and the security interest of the Loan Trustee are not perfected to exceed 20% of the total number of Unit-days for said fiscal year, the number of Unit-days usage for any Unit in any jurisdiction being the sum of the days that such Unit is physically present in said jurisdiction, the total number of Unit-days in any fiscal year being the aggregate for all Units of the number of days that each railroad car is a Unit during that fiscal year; nor for the periods (i) commencing with the original execution and delivery of this Lease through February 5, 1987, (ii) February 6, 1987 through February 5, 1990 or (iii) February 6, 1990 through the

end of the Term, will Lessee permit more than 25%, 30% or 35% of the Units, respectively, to be located at any one time in jurisdictions in which the right, title and interest of Lessor and the security interest of the Loan Trustee are not perfected. For the purposes of this paragraph (d) of Section 8, jurisdictions in which the right, title and interest of Lessor in the Units and the security interest of the Loan Trustee are perfected shall be the United States and Canada or a province thereof if (x) all action as may be necessary or appropriate in order to protect and preserve the right, title and interest of Lessor in each Unit and to protect and preserve the security interest created by the Indenture as a valid, prior perfected security interest in such Unit has been taken and (y) Lessor, the Loan Trustee and each Participant shall have been furnished with an opinion of counsel admitted in such jurisdiction, which counsel and opinion shall be reasonably satisfactory to each Participant, stating that all such action has been taken and reciting such action. Notwithstanding the foregoing or the provisions of subparagraph (xii) of paragraph (c) of this Section 8, no Unit shall be used "predominantly outside the United States" within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended, nor shall Lessee sublease any Unit to any person in whose hands such Unit would not qualify as "Section 38 property" within the meaning of such Code.

(e) *Return of the Units.* Upon the expiration of this Lease, Lessee will, at its own cost and expense, return and yield possession of each Unit to Lessor. At the time of its return, each Unit shall be free and clear of all Liens and rights of others (except Liens permitted by clause (ii) of Section 6), and shall be in the condition and repair required to be maintained during the Term under paragraph (a) of this Section 8. Lessee will, if so requested by Lessor, and at Lessee's own expense and risk, (i) appropriately prepare each Unit for shipment, or permit persons designated by Lessor to do so; (ii) provide free storage (at not more than 25 storage locations in the contiguous 48 states of the United States) for each Unit on Lessee's premises or premises contracted for by Lessee for a period not exceeding 180 days following notification to Lessor by Lessee that all the Units have been assembled and delivered for storage, and transport the same, at any time within such 180-day period, to any connecting carrier for shipment, all as directed by Lessor, the storage of such Units and the movement to the connecting carrier to be at the expense and risk of Lessee (including the insurance required by Section 11 hereof); and in the event that any Unit shall suffer an Event of Loss during such storage period, Lessee shall pay Lessor the Stipulated Loss Value thereof in the manner prescribed in Section 10 hereof. During any such storage period Lessee will permit Lessor or any person designated by it, including the authorized representatives of any prospective purchaser or lessee of such Unit, to inspect the same at the expense of Lessor. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance thereof. Lessee shall pay to Lessor for each day from the date of expiration of this Lease until all Units are assembled and delivered to storage as above provided an amount equal to .0337% of the Purchase Price of each such Unit not so assembled and delivered to storage.

Without any limitation of Lessee's obligations under the preceding paragraph, Lessee hereby irrevocably authorizes Lessor, at and after any time Lessee shall be obligated to return possession of any Unit or Units to Lessor, to demand and take possession of such



Unit or Units, in the name and on behalf of Lessee, from whosoever shall at the time be in possession of such Unit or Units, and, in connection therewith, Lessee will supply Lessor with such documents as Lessor may reasonably request.

**Section 9. *Replacement of Parts; Alterations, Modifications and Additions.***

**(a) *Replacement of Parts.*** Lessee, at its own expense, will promptly replace or cause to be replaced all parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature (herein, for the purposes of this Section 9, collectively called "Parts") which, originally or from time to time, have been incorporated in or installed as part of any Unit and which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever. In the ordinary course of maintenance, service, repair, overhaul or testing, Lessee may remove any Parts, *provided* that Lessee shall (and Lessee hereby agrees that it will) forthwith replace such Parts. Each replacement Part shall be free and clear of all Liens and rights of others (other than any Liens permitted by Section 6) and shall be in as good operating condition as, and shall have a value and utility at least equal to that of, the replaced Part (assuming that such replaced Part shall have been in the condition and repair required to be maintained by the terms hereof).

Each Part at any time removed from any Unit shall remain the property of (and title thereto shall remain in) Lessor, no matter where such Part shall be located at any particular time, until such time as such Part shall have been replaced by a Part incorporated in or installed as part of such Unit and meeting the requirements for a replacement Part specified in the preceding paragraph. At such time as any replacement Part shall become incorporated in or installed as part of such Unit as above provided, without further act or instrument, (i) title to such replacement Part shall thereupon vest in Lessor, (ii) such replacement Part shall become subject to this Lease and be deemed part of such Unit for all purposes hereof to the same extent as the removed Part, and (iii) title to the removed Part shall thereupon vest in Lessee or such person as shall be designated by Lessee, free and clear of all rights of Lessor.

**(b) *Alterations Required by Law.*** Lessee, at its own expense, will make such alterations, modifications and additions of and to any Unit or Units (herein, for the purposes of this paragraph (b), collectively called "required alterations") as may be required from time to time to meet the requirements of law or of any governmental authority having jurisdiction (regardless of upon which person such requirements shall, by their terms, be nominally imposed). Title to all Parts consisting of required alterations shall, without further act or instrument, vest in Lessor.

**(c) *Additions Desired by Lessee.*** Lessee, at its own expense, may from time to time make such alterations, modifications and additions of and to any Unit or Units (herein, for the purposes of this paragraph (c), collectively called "voluntary additions") as Lessee may deem desirable in the proper conduct of its business; *provided, however*, that each such voluntary addition shall not (and Lessee hereby agrees that such voluntary addition will not) cause the value, utility or condition of such Unit or Units to be less or worse than the value, utility and condition thereof immediately prior to such voluntary addition (assuming that such Unit or Units shall at that time have been in the condition required to be maintained by the terms of this Lease). Any such voluntary addition shall be capable of being removed

from such Unit or Units without causing the value, utility or condition of such Unit or Units to be less or worse than that of such Unit or Units immediately prior to such voluntary addition (assuming that such Unit or Units shall at that time have been in the condition required to be maintained by the terms of this Lease) and, in any event, without causing material damage to such Unit or Units, and may be removed by Lessee prior to the expiration or earlier termination of this Lease. Title to any voluntary addition shall remain vested in Lessee.

(d) *General.* Notwithstanding the foregoing, Lessee may not make any alterations, modifications or additions of or to any Unit or Units if such alteration or modification of or addition to such Unit would impair the ability of Lessor to sell or lease such Unit at the expiration or earlier termination of this Lease to a person not affiliated with Lessee for use in such person's trade or business.

Section 10. *Loss, Destruction or Damage.* (a) *Payment of Stipulated Loss Value Upon an Event of Loss.* If an Event of Loss with respect to any Unit shall occur, Lessee will forthwith give Lessor written notice thereof and will pay the appropriate Stipulated Loss Value for such Unit (computed as of the date such payment shall be made) to Lessor on the Lease Payment Date that shall first occur at least 15 days after such Event of Loss (together with Basic Rent due on such date with respect to such Unit). Upon the making of such Rent and Stipulated Loss Value payment by Lessee in respect of any Unit, the Basic Rent for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and Lessor shall be entitled to recover possession of such Unit. Lessor hereby appoints Lessee its agent to dispose of any Unit suffering an Event of Loss at the best price obtainable on an "as is, where is" basis and Lessee shall notify Lessor prior to any such sale; *provided, however*, that if it shall be necessary for Lessee immediately to dispose of any Unit which shall have been subject to an Event of Loss, Lessee may notify Lessor of any sale of such Unit to a scrap dealer promptly after such sale; *provided, further*, that if Lessee is not in default hereunder, Lessee may, by written notice delivered to Lessor concurrently with the notice of such an Event of Loss, elect to purchase the Unit or Units suffering such an Event of Loss at a purchase price equal to the greater of the Stipulated Loss Value or the Fair Market Sales Value thereof, such price to be payable promptly after the determination of the amount thereof. Provided that Lessee has previously paid the Stipulated Loss Value and all Rent to Lessor and provided that no other Event of Default (or other event or condition which, after notice or the passage of time, or both, would become an Event of Default) shall have occurred and be continuing Lessee shall be entitled to the net proceeds of the sale of any Unit having suffered an Event of Loss to the extent that such proceeds do not exceed the aggregate of (x) the Stipulated Loss Value of such Unit and (y) the portion of Basic Rent with respect to such Unit applicable to the period from the date of such Event of Loss to but not including the Lease Payment Date on which such Stipulated Loss Value was paid. Lessee shall have no interest in the proceeds of insurance on the Units paid for by Lessor or in any other payments in respect of Units suffering an Event of Loss made by any person in excess of the Stipulated Loss Value of such Units.

(b) *Application of Other Payments Upon an Event of Loss.* Any payments received at any time by Lessor or by Lessee from any governmental authority or other person (except Lessee) as a result of, or with respect to periods after, the occurrence of an Event of Loss with respect to any Unit shall be applied as follows:

(i) all such payments received at any time by Lessee shall be promptly paid to Lessor for application pursuant to the following provisions of this paragraph (b); and

(ii) so much of such payments as shall not exceed the Stipulated Loss Value of such Unit and the portion of Basic Rent with respect to such Unit applicable to the period from the date of such Event of Loss to but not including the Lease Payment Date on which such Stipulated Loss Value was, or is required to be, paid by Lessee pursuant to paragraph (a) of this Section 10 shall be applied in reduction of Lessee's obligation to pay such amount, if not already paid by Lessee, or, if already paid by Lessee, shall be applied to reimburse Lessee for its payment of such amount, unless an Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing (in which event, such payments shall be applied against Lessee's obligations under this Lease); and

(iii) the balance, if any, of such payments remaining thereafter shall be retained by Lessor.

(c) *Application of Certain Payments Not Relating to an Event of Loss.* Any payments received at any time by Lessor or by Lessee from any person with respect to any loss or damage to any Unit or Units, or any part thereof or interest therein, not constituting an Event of Loss shall be applied as follows:

(i) in reimbursement to Lessee for repairs or for replacement of property in respect of which such payment shall have been received, unless an Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing (in which event, the amount which would have been used so to reimburse Lessee shall be applied against Lessee's obligations under this Lease); and

(ii) the balance, if any, of such payments remaining thereafter to be paid over to or retained by Lessor.

(d) *Application of Payments Relating to a Requisition of Use.* In the event of the requisition (unless such requisition constitutes an Event of Loss in which case the provisions of paragraph (b) of this Section 10 shall apply) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the Term, all of Lessee's obligations (including without limitation the obligation to pay Rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the Term, Lessee shall be obligated to return such Unit to Lessor pursuant to the terms hereof, promptly upon such return by the Government rather than at the end of the Term. All payments received by Lessor or Lessee from the Government for the use of such Unit during the Term of this Lease shall be paid over to, or retained by, Lessee, provided no Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing; and all payments received by Lessor or Lessee from the Government for the use of such Unit after the Term shall be paid over to, or retained by, Lessor.

Section 11. *Insurance.* (a) *Insurance Against Loss or Damage to the Units.* Lessee will, at its own cost, maintain or cause to be maintained in effect throughout the Term and during any storage period, with financially sound and reputable insurers acceptable to Lessor and each Participant, insurance policies insuring against loss or damage to the Units from such risks and in such amounts as a prudent man engaged in the business of leasing railroad rolling stock would maintain or cause to be maintained with respect to similar properties; *provided, however,* that in any event Lessee shall maintain or cause to be maintained such insurance in an amount, on a per occurrence basis, not less than the greater of (A) \$3,000,000 or (B) the aggregate Stipulated Loss Value of all Units at any one location, subject in either case to a deductible not in excess of \$5,000, or, in the case of earthquake or flood, \$25,000; and *provided, further,* that Lessee shall not be required to insure any Unit which is required to be insured under Subleases permitted by paragraph (c) of Section 8, so long as the terms of such Subleases require the sublessees thereunder to insure the Units subject thereto against loss or damage to such Units from such risks and in such amounts as are customarily insured against by railroad companies, and in any event insured in the same manner and to the same extent as such sublessees insure other similar equipment which they own or lease. Any insurance policies carried in accordance with this paragraph (a) shall name (A) Lessor, as owner of the Units, and the Owner and (B) unless and until the Indenture shall have been terminated, the Loan Trustee, as an additional insured with respect to the Units. Such insurance policies shall be made payable to the Loan Trustee under a standard mortgagee loss payable clause satisfactory to the Loan Trustee (unless and until the Indenture shall have been terminated, at which time such insurance shall be made payable to Lessor), and shall insure Lessor's, the Owner's and the Loan Trustee's interests regardless of any breach or violation by Lessee of any warranties, declarations or conditions contained in such policies.

(b) *Insurance Against Public Liability and Property Damage.* Lessee will, at its own cost, maintain or cause to be maintained in effect throughout the Term, with financially sound and reputable insurers acceptable to Lessor and the Participants, insurance policies with respect to the Units, insuring against loss or damage to the person and property of others from such risks and in such amounts as a prudent man engaged in the business of leasing railroad rolling stock would maintain or cause to be maintained with respect to similar properties; *provided, however,* that Lessee will maintain public liability and property damage insurance applicable to the Units in amounts which shall be not less than \$20,000,000 per occurrence, subject to a deductible not in excess of \$50,000. Any insurance policies maintained in accordance with this paragraph (b) shall name (A) Lessor, as owner of the Units, and the Owner and (B) unless and until the Indenture shall have been terminated, the Loan Trustee, as an additional insured thereunder with respect to the Units, and shall insure Lessor's (in its individual capacity and as trustee), the Owner's and the Loan Trustee's interests regardless of any breach or violation by Lessee of any warranties, declarations or conditions contained in such policies.

(c) *General.* On or before the First Closing Date, and thereafter not less than ten days prior to the expiration date of each expiring policy theretofore delivered pursuant to this Section 11, Lessee will deliver to Lessor, the Loan Trustee and each Participant duplicate originals of all renewal policies or new policies of insurance (or certificates thereof issued by the insurers thereunder or their duly authorized agents) demonstrating that Lessee is in compliance with the provisions of this Section 11; *provided, however,* that if the delivery of any formal policy or certificate, as the case may be, shall be delayed, Lessee will deliver an executed binder with respect thereto and will deliver the formal policy or certificate, as the case may be, promptly after receipt thereof. Lessee will deliver to Lessor and the Loan

Trustee from time to time, promptly upon request, an Officer's Certificate of Lessee certifying whether all premiums then due for the policies required by this Section 11 shall have been paid.

Lessee will, and every policy or certificate of insurance required to be maintained or furnished by Lessee under this Section 11 shall provide that the insurer will, (i) promptly notify Lessor and the Loan Trustee in writing of any default in the payment of any premiums or any other act or omission on the part of Lessee of which it shall have knowledge which shall entitle the insurer to cancel the policy and (ii) notify Lessor and the Loan Trustee in writing, at least thirty days prior thereto, of the expiration or termination or any change in the coverage of any such insurance (each such policy or certificate to provide that no such termination, expiration or change will be effective until thirty days after such notice is given). In the event that Lessee shall fail to maintain insurance as herein provided, Lessor may, at its option, maintain such insurance, and, in such event, Lessee will reimburse Lessor upon demand for the cost thereof as Supplemental Rent.

Section 12. *Indemnification and Expenses.* (a) *General Indemnity.* Whether or not any of the transactions contemplated hereby shall be consummated, Lessee hereby assumes liability for, and agrees to indemnify, protect, save and keep harmless Lessor (in its individual and trust capacities), each Participant, the Loan Trustee, the Trust Estate and the Trust Indenture Estate, and their respective successors, assigns, agents and servants, and any of them (herein, for the purposes of this Section 12, individually called an "Indemnified Party"), from and against, any and all liabilities, obligations, losses, damages, penalties, claims, causes of action, suits, demands, judgments, costs, charges, fees, expenses and disbursements (including reasonable legal fees and expenses), of whatsoever kind and nature (herein, for the purposes of this Section 12, collectively called "Expenses"), imposed on, asserted against or incurred or suffered by any Indemnified Party in any way relating to or arising out of the Operative Documents, the construction, manufacture, installation, purchase, acceptance, non-acceptance, rejection, ownership, delivery, non-delivery, lease, possession, use, occupancy, transportation, operation, insurance, condition, return, sale, exchange or other disposition of or in respect of the Units, or any portion thereof or interest therein, including, without limitation, latent and other defects, whether or not discoverable by Lessor, the Owner, the Loan Trustee or Lessee, any claim for patent, trademark or copyright infringement, any claim arising under the strict liability doctrine in tort, any claim arising from (i) injury to persons or property growing out of or in connection with the ownership or use of the Units, or any portion thereof or interest therein, or resulting from the condition of any thereof, or (ii) violation or breach by Lessee of any representation, warranty, agreement or condition contained in the Operative Documents or of conditions, agreements, laws, regulations, requirements and rules affecting or relating to the Units, or any portion thereof or interest therein; *provided, however*, that Lessee shall not be required to indemnify any Indemnified Party against (A) Expenses referred to in Section 8 of the Participation Agreement, (B) any Expenses incurred by any Indemnified Party attributable to (i) its willful misconduct, (ii) its gross negligence or (iii) its willful or grossly negligent failure to perform its obligations under the Operative Documents in accordance with their respective terms, (C) Expenses described in Section 7 (except to the extent that indemnification is provided for in said Section 7) and (D) except as otherwise specifically provided in this Lease, or unless an Event of Default shall have occurred and be continuing

under this Lease, the Purchase Price of the Units and Expenses relating to or arising out of the disposition of any Unit by Lessor after possession of such Unit shall have been surrendered to Lessor at the end of the Term, except for Expenses otherwise fairly attributable to any failure by Lessee fully to perform and observe any of its covenants, agreements and obligations hereunder. If Lessee shall have knowledge of any Expense hereby indemnified against, it will give prompt written notice thereof to every Indemnified Party concerned and, in addition thereto, if Lessee shall have knowledge of an Expense greater than \$25,000, it will give prompt written notice thereof to the Loan Trustee and Lessor.

(b) *Indemnity for Costs and Expenses in Connection with Lease and Other Operative Documents.* Without in any way limiting the provisions of Section 7, paragraph (a) of this Section 12 or Section 8 of the Participation Agreement, Lessee will (i) pay (or cause to be paid) the ongoing fees, expenses and disbursements of Lessor, in its individual capacity, as lessor under this Lease, as issuer of the Notes under the Indenture and as Trustee under the Trust Agreement, with respect to the administration of this Lease and the Trust Estate, and the ongoing fees, expenses and disbursements (including, without limitation, recording and filing fees) of the Loan Trustee as Loan Trustee under the Indenture; and (ii) pay (or cause to be paid) all the costs and expenses incurred by Lessor, the Loan Trustee and the Participants in connection with (w) the preparation of, and the entering into, giving or withholding of, any amendment, supplement, waiver or consent with respect to the Operative Documents (whether or not the same shall have become effective), (y) any Event of Loss and Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) and (z) any costs associated with or arising out of the transfer or prepayment of the Notes (other than transfer taxes).

(c) *Payments, Survival and Other Provisions.* All amounts payable by Lessee pursuant to this Section 12 shall be payable directly to the persons entitled to indemnification. Lessee shall be obligated under this Section 12 as primary obligor whether or not any Indemnified Party shall also be indemnified with respect to the same matter under any other agreement by any other person, and any Indemnified Party seeking to enforce the indemnification may proceed directly against Lessee under this Section 12 without first resorting to any such other rights of indemnification. If any action, suit or proceeding shall be brought against any Indemnified Party in connection with any claim indemnified against under paragraph (a) of this Section 12, Lessee may (and, upon such Indemnified Party's request, will), at Lessee's own expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by Lessee and approved by such Indemnified Party, and, in the event of any failure by Lessee to do so, Lessee will pay all costs and expenses (including, without limitation, legal fees and expenses) incurred by such Indemnified Party in connection with such action, suit or proceeding. In the event that Lessee shall be required to make any payment under this Section 12, the amount payable (which Lessee hereby agrees to pay) shall be an amount which, after deduction of all taxes required to be paid by the particular Indemnified Party in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes), shall be equal to the amount of the expense indemnified against.

Upon the payment in full of any indemnities under this Section 12 by Lessee, and *provided* that no Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing, Lessee shall be subrogated to any right of such Indemnified Party in respect of the matter against which indemnity shall have been given. Any payment received by any Indemnified Party from any person (except Lessee or the Guarantor) as a result of any matter with respect to which such Indemnified Party is indemnified by Lessee under this Section 12 shall be paid over to Lessee to the extent necessary to reimburse Lessee for indemnification payments previously made.

The indemnities contained in this Section 12 shall survive the sale or transfer of any Note, the resignation or removal of any particular person as Trustee under the Trust Agreement, or as Loan Trustee under the Indenture, and the termination or expiration of this Lease and the Indenture with respect to all events, facts, conditions or other circumstances occurring or existing prior to such sale, transfer, resignation, removal, termination or expiration, and, without limiting the generality of paragraph (f) of Section 21, said indemnities are made expressly for the benefit of, and shall be enforceable by, any Indemnified Party.

Section 13. *Events of Default.* Each of the following events or conditions shall constitute an Event of Default (whether or not any such event or condition shall be voluntary or involuntary, or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any governmental authority):

(a) Lessee shall fail to make any payment of Basic Rent or Stipulated Loss Value when due and such failure shall continue for 5 days; or

(b) Lessee shall fail to make any payment of Supplemental Rent (other than any payment of Stipulated Loss Value) when due and such failure shall continue for 5 days; or

(c) the Guarantor shall fail to make any payment required to be made by it pursuant to the Guaranty when due; or

(d) the Guarantor shall fail to perform or observe any agreement contained in Section 2, §§ 5.4 through 5.10 or §§ 5.12 through 5.17 of the Guaranty; or

(e) the Guaranty shall fail or cease to be in full force and effect; or

(f) Lessee shall fail to maintain the insurance required to be maintained under Section 11, or shall fail to perform or observe any of the other provisions of Section 11 or any of the conditions or agreements in Section 6 or in paragraphs (c) or (d) of Section 8 to be performed or observed by Lessee; or

(g) Lessee or the Guarantor shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder, under the Participation Agreement or under any of the other Operative Documents (other than such failure by Lessee which shall have been cured by the Guarantor pursuant to the Guaranty), and such failure shall continue unremedied by such person for 30 days after such failure became known to any officer or responsible official of Lessee or the Guarantor; or

(h) any representation or warranty made by Lessee or the Guarantor herein, in the Participation Agreement or in any of the other Operative Documents or in any instrument, certificate or other document furnished Lessor, the Loan Trustee or any Participant in connection herewith or therewith, or pursuant hereto or thereto, shall have been or shall be incorrect or misleading in any material respect when made; or

(i) Lessee or the Guarantor shall fail (within any permissible period of grace provided for with respect thereto) to make any payment due on any indebtedness or any event shall occur (other than the mere passage of time) or any condition shall exist in respect of any indebtedness of Lessee or the Guarantor, or under any agreement securing or relating to such indebtedness, the effect of which is to cause (or permit any holder of such indebtedness or a trustee to cause) such indebtedness, or a portion thereof, to become due prior to its stated maturity or prior to its regularly scheduled dates of payment; or

(j) final judgment or judgments for the payment of money aggregating in excess of \$250,000 shall be outstanding against one or more of Lessee, the Guarantor and the Restricted Subsidiaries and any one of such judgments has been outstanding for more than 30 days from the date of its entry and has not been discharged in full or stayed; *provided, however*, that this paragraph (j) shall not apply to any such judgment if such judgment is rendered by a court in a nation (other than the United States, Canada, Japan or any nation in Western Europe) in which (i) none of Lessee, the Guarantor or any subsidiary of either conducts business so as to be subject to the personal jurisdiction of such court, and (ii) no more than one percent of Consolidated Total Assets are physically located (the terms "Consolidated Total Assets" and "Restricted Subsidiaries" having the respective meanings set forth in the Guaranty); or

(k) Lessee shall fail to perform or observe any of the covenants, conditions or agreements in Section 10 of the Participation Agreement to be performed or observed by Lessee; or

(l) Lessee or the Guarantor shall commence a voluntary case under any chapter of the Federal Bankruptcy Code, or shall consent to (or fail to controvert in a timely manner) the commencement of an involuntary case against Lessee or the Guarantor under said Code; or

(m) Lessee or the Guarantor shall institute proceedings for liquidation, rehabilitation, readjustment or composition (or for any related or similar purpose) under any law (other than the Federal Bankruptcy Code) relating to financially distressed debtors, their creditors or property, or shall consent to (or fail to controvert in a timely manner) the institution of any such proceedings against Lessee or the Guarantor; or

(n) Lessee or the Guarantor shall be insolvent (within the meaning of any applicable law), or shall be unable, or shall admit in writing its inability, to pay its debts generally as they come due, or shall make an assignment for the benefit of creditors or enter into any arrangement for the adjustment or composition of debts or claims; or

(o) a court or other governmental authority or agency having jurisdiction in the premises shall enter a decree or order (i) for the appointment of a receiver, liquidator,



assignee, trustee or sequestrator (or other similar official) of Lessee or the Guarantor, or of any part of the property of such person, or for the winding-up or liquidation of the affairs of such person, and such decree or order shall remain in force undischarged and unstayed for a period of more than thirty days, or (ii) for the sequestration or attachment of any property of Lessee or the Guarantor without its unconditional return to the possession of such person, or its unconditional release from such sequestration or attachment, within thirty days thereafter; or

(p) a court having jurisdiction in the premises shall enter an order for relief in an involuntary case commenced against Lessee or the Guarantor under the Federal Bankruptcy Code, and such order shall remain in force undischarged and unstayed for a period of more than thirty days; or

(q) a court or other governmental authority or agency having jurisdiction in the premises shall enter a decree or order approving or acknowledging as properly filed or commenced against Lessee or the Guarantor a petition or proceedings for liquidation, rehabilitation, readjustment or composition (or for any related or similar purpose) under any law (other than the Federal Bankruptcy Code) relating to financially distressed debtors, their creditors or property, and any such decree or order shall remain in force undischarged and unstayed for a period of more than thirty days; or

(r) Lessee or the Guarantor shall take corporate action for the purpose or with the effect of authorizing, acknowledging or confirming the taking or existence of any action or condition specified in paragraph (l), (m) or (n) above.

Section 14. *Remedies.* Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor, at Lessor's option, may declare this Lease to be in default, and at any time after such declaration, so long as all outstanding Events of Default shall not have been cured, Lessor, at Lessor's option, may exercise one or more of the following rights, powers, privileges or remedies as Lessor in Lessor's sole discretion shall elect, to the extent not prohibited by, and subject to compliance with any mandatory requirements of, applicable law then in effect:

(a) demand that Lessee (and Lessee hereby agrees that, upon the demand of Lessor, Lessee will) return possession of the Units promptly to Lessor in the manner and condition required by, and otherwise in accordance with, the provisions of paragraphs (a) and (b) and the first two sentences of paragraph (e) of Section 8, as if possession of the Units were being returned at the end of the Term; demand that Lessee (and Lessee hereby agrees that, upon the demand of Lessor, Lessee will) provide free storage for the Units or any portion thereof designated by Lessor for such time as shall be necessary (but in any event not for a period in excess of 270 days), in the sole discretion of Lessor, appropriately to prepare the Units for shipment to such point or points on any railroad line in the United States of America as shall be designated by Lessor after Lessor shall have so declared this Lease to be in default, and Lessee shall bear the entire expense and risk of such storage, such preparation and such shipment. Lessor, at Lessor's option, may (and Lessor is hereby granted, or Lessee will cause to be granted to Lessor, an express right to) take immediate possession of the Units and remove all or any portion of the Units by summary proceedings or otherwise, all

without liability to Lessee (or to any person claiming by, through or under Lessee) for or by reason of such entry or taking of possession whether for the restoration of damage to property caused by such entry or taking of possession or otherwise (any and all such liability being waived, to the extent that Lessee may effectively do so);

(b) unless Lessor shall have exercised Lessor's rights under, and recovered the full amount of the damages provided for in, paragraph (d) of this Section 14, sell the Units or any portion thereof at public or private sale, as Lessor may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such sale or for the proceeds thereof (except to the extent required by paragraph (e) of this Section 14 if Lessor shall elect to exercise the rights under said paragraph), in which event Lessee's obligation to pay Basic Rent hereunder for the period commencing after the date of receipt by Lessor of the proceeds of such sale shall terminate (except to the extent that Basic Rent is to be included in computations under paragraph (e) of this Section 14 if Lessor shall elect to exercise the rights under said paragraph);

(c) hold, keep idle or lease to others the Units or any portion thereof, as Lessor in Lessor's sole discretion may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto, except the Lessee's obligation to pay Basic Rent for the period commencing after Lessee shall have been deprived of possession pursuant to this Section 14 shall be reduced by the net proceeds, if any, received by Lessor from leasing the Units, or any portion thereof, to any person other than Lessee for such period or any portion thereof;

(d) whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of the rights, powers or privileges under paragraph (a) or (c) of this Section 14, Lessor, by notice to Lessee specifying a payment date which shall be a Lease Payment Date not earlier than ten days after the date of such notice, may demand that Lessee pay to Lessor (and Lessee hereby agrees that Lessee will pay to Lessor) on the payment date specified in such notice, as liquidated damages for loss of the benefit of the bargain, and not as a penalty (in lieu of the Basic Rent due for periods commencing after the Lease Payment Date specified in such notice), any unpaid Basic Rent and Supplemental Rent due for periods up to and including the Lease Payment Date specified in such notice, plus whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice (together with interest on such amounts at the Default Rate from such Lease Payment Date to the date of actual payment): (i) an amount equal to the excess, if any, of the Stipulated Loss Value of the Units, computed as of the payment date specified in such notice, over the Fair Market Rental Value of the Units for the remainder of the Term, after discounting such Fair Market Rental Value quarter-annually (effective on Lease Payment Dates) to present worth as of the payment date specified in such notice at the rate per annum of 6%, or (ii) an amount equal to the excess, if any, of the Stipulated Loss Value as of the payment date specified in such notice (calculated as aforesaid) over the Fair Market Sales Value of the Units as of the payment date specified in such notice;

(e) if Lessor shall have sold the Units pursuant to paragraph (b) of this Section 14, Lessor may, if Lessor shall so elect, demand that Lessee pay to Lessor (and Lessee

hereby agrees that Lessee will pay to Lessor) as liquidated damages for loss of the benefit of the bargain, and not as a penalty (in lieu of the Basic Rent due for periods after the Lease Payment Date next succeeding the date of such sale), any unpaid Basic Rent and Supplemental Rent due for periods to and including the Lease Payment Date next succeeding the date of such sale, plus the amount by which the Stipulated Loss Value of the Units computed as of the date of such sale (calculated in the manner referred to in paragraph (d) of this Section 14) shall exceed the amount of the net proceeds of such sale; and

(f) Lessor may exercise any other right, power, privilege or remedy which may be available to Lessor under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Lease.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing rights, powers, privileges or remedies and for all legal fees and other costs and expenses incurred by Lessor, the Loan Trustee or any Participant by reason of the occurrence of any Event of Default or the exercise of any of Lessor's rights, powers, privileges or remedies with respect thereto, including all costs and expenses incurred in connection with the surrender of the Units in accordance with Section 8 and this Section 14 or in placing the Units in the condition required hereby, together, in each case, with interest thereon at the Default Rate. For the purposes of paragraph (d) of this Section 14, the Fair Market Rental Value and the Fair Market Sales Value of the Units shall be determined by mutual written agreement of Lessor and Lessee or, upon request by Lessor at any time prior to such mutual agreement, by the Appraisal Procedure, the costs of which shall be borne by Lessee.

At any sale pursuant to this Section 14, any Participant and the Loan Trustee may bid for and purchase any or all of the Units.

No express or implied waiver by Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any other Event of Default. To the extent that it may effectively do so, Lessee hereby waives and releases any rights, powers, privileges, immunities or remedies now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use the Units in mitigation of Lessor's damages as set forth in this Section 14, or which may otherwise limit or modify any of Lessor's rights, powers, privileges or remedies under this Section 14, or delay or hinder the exercise thereof by Lessor.

No right, power, privilege or remedy herein conferred upon or reserved to Lessor or otherwise referred to is intended to be exclusive of any other right, power, privilege or remedy, and every right, power, privilege and remedy shall be cumulative and concurrent and in addition to any other legal or equitable right, power, privilege and remedy conferred or reserved hereunder or now or hereafter existing in law or in equity, and the exercise or beginning of exercise by Lessor of any one or more of such rights, powers, privileges or remedies shall not preclude the simultaneous or later exercise by Lessor of any or all of such other rights, powers, privileges or remedies. The failure of Lessor to insist upon the strict performance of any provision, or to exercise any right, power, privilege or remedy contained

or referred to in this Lease, shall not be construed as a waiver or a relinquishment thereof for the future. Receipt by Lessor of any Rent payable hereunder with knowledge of the breach of any provision contained in this Lease shall not constitute a waiver of such breach (other than the instant failure to pay such Rent).

Lessor shall be entitled to injunctive relief in case of the violation, or attempted or threatened violation, of any provision of this Lease, and to a decree compelling observance or specific performance of each provision of this Lease, and to any other legal or equitable remedy.

Section 15. *Permitted Contests.* If no Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing, Lessee need not pay, discharge or remove any tax, charge, levy, assessment or Lien or any other imposition on or against the Units or any portion thereof or interest therein, so long as Lessee shall be contesting the existence, amount or validity thereof in good faith by appropriate legal or administrative proceedings timely instituted and diligently prosecuted which shall operate to prevent the collection or satisfaction of the tax, charge, levy, assessment, Lien or other imposition so contested, and the sale or forfeiture of any Unit or Units, or any part thereof or interest therein, to satisfy the same or otherwise resulting from such noncompliance, and which shall not, in the judgment of Lessor and the Loan Trustee, materially affect the interests or rights, powers, privileges, remedies or immunities of Lessor, the Loan Trustee or the Participants; *provided, however*, that Lessee shall have given such security as may be required in said proceedings and such reasonable security as may be demanded by Lessor or the Loan Trustee to ensure such payment and to prevent any sale or forfeiture of any Unit or Units, or any part thereof or interest therein, by reason of such nonpayment; and *provided, further*, that neither Lessor, the Loan Trustee nor any Participant would be in any danger of criminal liability, or other liability or obligation for which no indemnification is provided hereunder, by reason of such nonpayment or noncompliance. Lessor will, at the request and expense of Lessee, cooperate fully with Lessee in any such proceedings. Without limiting the generality of Section 12 hereof, Lessee hereby assumes liability for, and agrees to hold Lessor, the Loan Trustee and each Participant harmless against, any costs and expenses that it or they may incur related to any such contest, and Lessee hereby agrees to pay promptly any final judgment enforcing any such tax, charge, levy, assessment, Lien or imposition, and cause the satisfaction of record of the same.

Section 16. *Further Assurances.* (a) *General.* Lessee will, at its own expense, promptly and duly execute and deliver, or cause to be promptly and duly executed and delivered, to Lessor, the Loan Trustee and each Participant such agreements, instruments and other documents (including, without limitation, any assurances and any conveyances, assignments, bills of sale, financing statements and continuation statements as may be necessary or advisable), and will take such further action, at Lessee's own expense, as may be necessary or as Lessor, the Loan Trustee or any Participant may from time to time reasonably request, in order to carry out more effectively the intent and purpose of this Lease, to establish, protect and preserve the rights, powers, privileges, remedies and immunities reserved or created, or intended to be reserved or created, by or in favor of Lessor, hereunder, to establish, protect and preserve Lessor's title to the Units and to create,

protect and preserve, for the benefit of the holders of the Notes, a valid prior perfected security interest in the Trust Indenture Estate, which action shall include, without limitation, if requested by Lessor, the Loan Trustee or any Participant, at Lessee's own expense, the recording or filing of counterparts hereof, or of such other agreements, instruments and documents with respect hereto (including financing statements and continuation statements) in accordance with the laws of such jurisdictions, as Lessor, the Loan Trustee or any Participant may from time to time reasonably request. Lessee will maintain appropriate records clearly identifying and specifying the location of each Unit, and Lessee will permit Lessor, the Loan Trustee and each Participant, by its agents, accountants, independent contractors, experts and attorneys, to examine such records, take extracts therefrom and discuss the same with Lessee's officers and agents at reasonable times during business hours and as often as may reasonably be requested.

(b) *Opinion of Counsel.* Lessee will, at its own expense, deliver to Lessor and the Loan Trustee at such times as it delivers financial statements pursuant to subparagraph (i) of paragraph (e) of Section 5 an opinion of counsel (which counsel may be the Guarantor's or Lessee's general counsel) in form and scope satisfactory to each Participant and substantially to the effect set forth in paragraphs 11 and 12 of the opinion of counsel set forth in Schedule A-1 to the Participation Agreement.

Section 17. *Notices.* All notices required or permitted under the terms and provisions hereof shall be in writing, and any such notice shall, except to the extent otherwise provided in Section 20, be deemed to have been duly given when delivered personally, or when deposited in the United States mail, with proper postage for certified mail (return receipt requested), prepaid, addressed, (i) if to Lessee, to it c/o X-L-Co, Inc., 60 State Street, Boston, Massachusetts 02109, Attention: President, or at such other address as Lessee shall from time to time designate in writing to Lessor and the Loan Trustee, (ii) if to Lessor, to the same at 45 Wall Street, New York, New York 10005, Attention: Corporate Trust and Agency Division, or at such other address as Lessor shall from time to time designate in writing to Lessee and the Loan Trustee, and (iii) if to the Loan Trustee, to it at its Principal Corporate Trust Office, or at such other address as the Loan Trustee shall from time to time designate in writing to Lessor and Lessee.

Section 18. *Right of First Refusal; Renewals.* (a) *Right of First Refusal.* Unless an Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing, Lessor shall not, at any time within 365 days after the end of the original term of this Lease (or, if Lessee has renewed this Lease for a Renewal Term, at the end of such Renewal Term) sell, transfer or otherwise dispose of any Unit unless:

(i) Lessor shall have given Lessee a written notice ("Lessor's Notice") (i) stating its intention to sell, transfer or otherwise dispose of such Unit, and (ii) offering to sell such Unit to Lessee for cash at the Fair Market Sales Value thereof, which offer may provide, if it involves more than one Unit, that Lessee must purchase all such Units as a group; and

(ii) Lessee shall not have notified Lessor in writing ("Lessee's Notice"), within 15 Business Days following receipt of Lessor's Notice, of its election to purchase such Unit or Units upon the terms and conditions set forth in Lessor's Notice on a date to be

specified by the Lessee in Lessee's Notice, which date shall be 15 days (or such later date as is necessary to complete the determination of Fair Market Sales Value) after the date of delivery of Lessee's Notice to Lessor, but not earlier than the end of the original term of this Lease (or, if Lessee has renewed this Lease for a Renewal Term, at the end of such Renewal Term).

In the event Lessee elects to purchase any Unit, and the date of purchase specified by Lessee is later than the end of the original term of this Lease (or, if Lessee has renewed this Lease for a Renewal Term, the end of such Renewal Term), this Lease (including the obligations to pay Rent) shall be further extended with respect to such Unit, upon the terms and conditions set forth herein, to the actual date of purchase.

Upon payment of the purchase price of any Unit, in immediately available funds, pursuant to an election by Lessee to purchase such Unit, Lessor shall upon request of Lessee execute and deliver to Lessee, or to Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to Lessee such title to such Unit as Lessor derived from the Manufacturer thereof, free and clear of all liens, security interests and other encumbrances arising through Lessor.

Notwithstanding the foregoing provisions of this paragraph (a) of this Section 18, Lessor may, if Lessee has not renewed this Lease pursuant to paragraph (b) of this Section 18, lease any or all Units at any time after the end of the original term of this Lease (or, if Lessee has renewed this Lease for a Renewal Term pursuant to paragraph (b) of this Section 18, at the end of such Renewal Term) without first offering to lease such Units to Lessee.

(b) *Renewal Options.* Provided that no Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute such an Event of Default), shall have occurred and be continuing, Lessee shall have the following renewal options: Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Units then leased hereunder for three additional renewal terms of five years each (individually a "Renewal Term") upon and subject to the terms and conditions herein contained for the original term of this Lease; *provided, however*, that the Basic Rent payable for and during any such Renewal Term shall be an amount equal to the Fair Market Rental Value of such Units as of the beginning of such Renewal Term and that the Stipulated Loss Value payable for and during any such Renewal Term in respect of any Unit suffering an Event of Loss during such Renewal Term shall be an amount equal to the higher of (i) the Fair Market Sales Value of such Unit as of the beginning of such Renewal Term, or (ii) an amount equal to 20% of the Purchase Price of such Unit. Each Renewal Term shall commence immediately upon the expiration of the preceding term. Lessee shall give Lessor written notice of any such election at least 180 days prior to the commencement of any Renewal Term provided for in this paragraph (b) of this Section 18.

(c) *Delivery of Equipment.* Unless Lessee has elected to purchase the Units then leased hereunder or to renew this Lease in respect of such Units as provided in this Section 18, all of such Units shall be returned to Lessor at the end of the original term, or the then current Renewal Term, as the case may be, in accordance with Section 8 hereof.

*Section 19. Assignment; Modification; Acceptance of Surrender.*

(a) *Assignment.* Lessee will not assign any of its rights hereunder, except that Lessee may assign its rights hereunder, or transfer such rights by operation of law, to any corporation

organized under the laws of the United States of America, or any state thereof, with which or into which Lessee shall merge or consolidate or to which Lessee shall transfer all or substantially all its assets, if the following conditions precedent shall have been fulfilled: (i) Lessee shall have delivered to Lessor, the Loan Trustee and each Participant an instrument satisfactory in form and substance to Lessor, the Loan Trustee and each Participant in which such assignee assumes this Lease and agrees to be liable for the due payment of Rent and for the due performance and observance of all the terms, covenants, conditions and agreements contained herein and in each of the other Operative Documents on Lessee's part to be performed and observed, (ii) the Guarantor shall have delivered a written confirmation that the Guaranty will remain in full force and effect and legally binding in accordance with its terms, notwithstanding such assignment or transfer, (iii) no Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing as of the date of such assignment or transfer, and no Event of Default (or other such event or condition) will result from such assignment or transfer, and Lessee shall have delivered to Lessor, the Loan Trustee and each Participant an Officer's Certificate to such effects, and (iv) Lessee shall have caused to be delivered to Lessor, the Loan Trustee and each Participant an opinion of counsel addressed, and satisfactory in form and substance, to Lessor, the Loan Trustee and each Participant as to the validity, binding effect and enforceability of the instruments and documents specified in clauses (i) and (ii) above. No such assignment or transfer shall have the effect of releasing XTRA Leasing, Inc., or any successor corporation which shall theretofore have become such in the manner prescribed in this paragraph (a) of Section 19, from its obligations hereunder or under the other Operative Documents.

(b) *Modification.* Unless and until Lessee shall have received written notice from the Loan Trustee that the security interest created by the Indenture in the Trust Indenture Estate shall have been released, no amendment or modification of, supplement to or waiver by or consent of Lessor in respect of any of the provisions of this Lease shall be effective unless and until the Loan Trustee shall have joined in such amendment, supplement, modification, waiver or consent, or shall have given its prior written consent thereto.

(c) *Acceptance of Surrender.* Except for a surrender at the end of the Term pursuant to paragraph (e) of Section 8, no surrender to Lessor of this Lease or of the Units or any portion thereof or interest therein shall be valid or effective unless and until agreed to and accepted in writing by a duly authorized officer of Lessor and of the Loan Trustee, and no act by any other representative or agent of Lessor or the Loan Trustee, or other act by Lessor or the Loan Trustee, shall constitute an acceptance of any such surrender.

Section 20. *Indenture as Security for Notes.* In order to secure the indebtedness evidenced by the Notes, the Indenture provides, among other things, for the assignment by Lessor to the Loan Trustee of certain of the rights of Lessor in this Lease and Lessor's interest in and to the Units and for the creation of a prior perfected security interest in the Trust Indenture Estate in favor of the Loan Trustee for the benefit of the holders from time to time of the Notes. Lessee hereby acknowledges notice of and consents to the assignment of Lessor's right, title and interest in, to and under this Lease and in and to the Units to the Loan Trustee to the extent provided in the Indenture, and agrees that, until it shall receive notice from the Loan Trustee stating that the Indenture has been satisfied and discharged, (i)

Lessee will make all payments (other than Supplemental Rent in respect of Lessee's obligations to Lessor or the Owner) payable to Lessor hereunder to the Loan Trustee in immediately available funds at such place as the Loan Trustee may specify from time to time in writing delivered to Lessee prior to the due date for the payment to be made; and Lessee hereby consents to the application and distribution of payments as provided in the Indenture; (ii) the Loan Trustee may enforce any and all of the terms of this Lease as though the Loan Trustee had been expressly made a party hereto; (iii) no action taken, suffered or omitted by Lessor shall adversely affect or limit any rights, powers, privileges, remedies or immunities of the Loan Trustee, and Lessee will not assert against the Loan Trustee any claim or defense that it may now or hereafter have against Lessor; (iv) such assignment will not release Lessor from any of Lessor's obligations under this Lease, and will not constitute an assumption of any such obligations on the part of the Loan Trustee (other than the obligation to apply such amounts as provided in the Indenture); and (v) all notices, offers, demands, consents, requests, waivers, approvals, statements, instruments, papers, communications or other documents given by Lessee will also be delivered to the Loan Trustee, and no such notice, offer, demand, consent, request, waiver, approval, statement, instrument, paper, communication or other document shall be of any effect unless and until so made to and received by the Loan Trustee.

Section 21. *Miscellaneous.* (a) *Disclaimer of Warranties, Etc.* NEITHER LESSOR, IN ITS INDIVIDUAL CAPACITY OR AS TRUSTEE, NOR THE LOAN TRUSTEE, NOR ANY PARTICIPANT SHALL BE DEEMED TO HAVE MADE, AND LESSOR HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, MERCHANTABILITY, COMPLIANCE WITH SPECIFICATIONS, CONDITION, SAFETY, DESIGN, OPERATION OR FITNESS FOR ANY PARTICULAR OR GENERAL USE OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNITS OR ANY PORTION THEREOF, except that Lessor warrants that the Units will be free of Liens resulting from acts of or claims against Lessor (or persons claiming through Lessor) and the Owner and not permitted hereby, it being intended, understood and agreed that, except as explicitly provided herein, all risks incident thereto, as between Lessor and Lessee, are to be borne by Lessee. The provisions of this paragraph (a) of this Section 21 have been negotiated, and, except to the extent otherwise explicitly stated, the foregoing provisions are intended, understood, acknowledged and agreed to be a complete exclusion and negation of any warranties by Lessor, express or implied, with respect to the Units, whether arising under the Uniform Commercial Code or any similar law now or hereafter in effect, or otherwise. Lessor agrees that, if (i) an Event of Default (or other event or condition which, after notice or the passage of time, or both, would constitute an Event of Default) shall not have occurred and be continuing, (ii) this Lease shall not have been previously terminated with respect thereto, or have expired, and (iii) the Loan Trustee shall have consented in writing thereto (unless and until the Indenture shall have been terminated), Lessor will, upon request of Lessee, assign to Lessee such claims as Lessor may have under any warranty with respect to any Unit made by any Manufacturer, contractor or subcontractor and any other claims Lessor may have against



any such Manufacturer, contractor or subcontractor with respect to the same, including, but not limited to, any claim for enforcement of any warranty or indemnity against any Manufacturer or any contractor, subcontractor or other person under the Purchase Orders, and, upon such assignment, Lessee may prosecute such claims in the name of Lessor, as the purchaser and owner of such Unit. Lessor agrees to execute such documents and assignments and take such action as may be reasonably requested by Lessee to provide to Lessee all of the rights and benefits contemplated by the preceding sentence.

(b) *Severability.* Any provision of this Lease which shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent that Lessee may effectively do so, Lessee hereby waives any provision of law which shall render any provision hereof prohibited or unenforceable in any respect.

(c) *Written Changes Only.* Subject to the provisions of paragraph (b) of Section 19, no term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination shall be sought.

(d) *Nature of This Lease.* This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any title to or ownership of the Units, the rights and interest of Lessee hereunder with respect to and in the Units being those of a lessee only.

(e) *Payments.* All computations of interest and amounts equivalent to interest under this Lease shall be made on the basis of a 360-day year of twelve 30-day months, except if and to the extent otherwise specified. All payments of Rent, and all other payments to be made in respect hereof, shall be made in immediately available funds. Notwithstanding any provision hereof to the contrary, any payment of Rent due on a day which is not a Business Day shall be made on the next succeeding Business Day.

(f) *Benefits and Binding Effect.* This Lease shall be binding upon, and shall inure to the benefit of and be enforceable by, Lessee and Lessor and their respective successors and assigns permitted hereunder (whether or not such successors and assigns shall be expressly referred to in any provisions hereof). Notwithstanding the foregoing, to the extent that any provision of this Lease shall purport to confer directly upon the Loan Trustee or any Participant or Participants any right, power, privilege, remedy or immunity, such provision shall inure to the benefit of, and be enforceable by, the Loan Trustee or any such Participant or Participants, as the case may be.

(g) *Headings.* The captions and headings in, and the Index to, this Lease are for convenience of reference only, and shall not define or limit any of the terms or provisions hereof or affect the construction or interpretation thereof.

(h) *Governing Law.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to any additional rights arising out of the filing, recording or deposit hereof,

if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited.

(i) *No Merger.* There shall be no merger of this Lease or of the leasehold interest hereby created with the title to the Units or any portions thereof or interest therein by reason of the fact that the same person may acquire or hold directly or indirectly this Lease or the leasehold interest created hereby or any interest in this Lease or in any such leasehold interest as well as the title to the Units.

(j) *Dating of Lease.* Although this instrument is dated for convenience as of the date first above written, the actual date or dates of execution by the parties hereto is or are, respectively, the date or dates stated in the Acknowledgments annexed to this Lease as originally executed and delivered.

(k) *Immunities; Satisfaction or Undertakings.* Anything herein to the contrary notwithstanding, each and all of the representations, undertakings and agreements herein made on the part of Lessor are made and intended not as personal representations, undertakings and agreements by or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by United States Trust Company of New York solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed hereunder by or shall at any time be enforceable against the said trust company or the Owner on account of any representation, undertaking or agreement hereunder of Lessor or the Owner, either expressed or implied, all such personal liability, if any, being expressly waived by Lessee and by all persons claiming by, through or under Lessee; *provided, however,* that Lessee or any person claiming by, through or under it, making claim hereunder, may look to the Trust Estate for satisfaction of the same.

(l) *Right to Perform.* If Lessee shall fail to comply with any of its covenants herein contained, either Lessor or the Owner may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by Lessee to the party making the same upon demand as Supplemental Rent hereunder, with interest at the Default Rate.

**SCHEDULE A OF  
EQUIPMENT LEASE  
AGREEMENT**

**DESCRIPTION OF UNITS**

100-Ton 4,750 and 4,700 Cubic Foot Capacity Covered Hoppers:

Manufacturer: Portec, Inc.

Number of Cars: 406

Identifying Marks: XTRX 76577-XTRX 76592, inclusive;  
MILW 101700-MILW 101799, inclusive (which covered hopper  
cars bearing identification marks MILW 101700-MILW 101799,  
inclusive, formerly bore identification marks  
XTRX 76593-XTRX 76692, inclusive); XTRX 76693-XTRX 76757,  
inclusive; WVRC 9200 (which covered hopper car bearing  
identification mark WVRC 9200 formerly bore identification  
mark XTRX 76758); XTRX 76759-XTRX 76927,  
inclusive; and XTRX 76928-XTRX 76982, inclusive.

Purchase Agreement: XTRA Inc. Equipment Purchase Order  
E-2064, dated November 3, 1979, accepted November 3,  
1979 by Railcar Division of Portec, Inc.

Manufacturer: Richmond Tank Car Company

Number of Cars: 520

Identifying Marks: XTRX 75958-XTRX 76082, inclusive;  
XTRX 76188-XTRX 76347, inclusive; MILW 101800-MILW  
101899, inclusive; and XTRX 76348-XTRX 76482,  
inclusive.

Purchase Agreement: Letter Order of Itel Corporation, dated  
November 30, 1978, accepted December 11, 1978 by Richmond  
Tank Car Company, as amended, and as assigned to XTRA, Inc.  
pursuant to an Assignment, Assumption of Liabilities  
and Release Agreement, dated as of October 25, 1979,  
among Itel Corporation, XTRA, Inc. and Richmond Tank  
Car Company.

Manufacturer: FMCCorporation, Marine and Rail Equipment Division

Number of Cars: 90

Identifying Marks: XTRX 76983-XTRX 76999, inclusive; and XTRX  
77010-XTRX 77082, inclusive.

Purchase Agreement: XTRA Inc. Purchase Order E-2098, dated  
June 5, 1980, accepted July 11, 1980, by Marine and Rail  
Equipment Division of FMC Corporation.

## **SCHEDULE B**

### **Certificate of Acceptance**

I, the duly authorized representative for Lessor and Lessee under the Equipment Lease Agreement, dated as of July 1, 1980, do hereby certify that the following Units were inspected and approved by Lessee and I accepted delivery under the aforesaid Lease on behalf of Lessor:

TYPE OF EQUIPMENT:	100-ton General Service Hopper Cars
DATE ACCEPTED:	
NUMBER OF UNITS:	
RAILROAD ROAD NUMBERS:	

I do further certify that the foregoing Units are in good order and condition, and conform to the specifications and requirements applicable thereto as provided in Section 8 of the aforesaid Lease.

I do further certify that each of the foregoing units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Leased from a Bank or Trust Company, as Trustee. Subject to Documents on File with the I.C.C."

The execution of this certificate will in no way relieve or decrease the responsibility of the Manufacturer named below for warranties it has made with respect to the Units.

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Authorized Representative  
of Trustee and Lessee

MANUFACTURER:

**SCHEDULE C OF  
EQUIPMENT LEASE  
AGREEMENT**

**STIPULATED LOSS VALUES**

<u>Lease Payment Date</u>	<u>Stipulated Loss Value *</u>
May 5, 1981 .....	88.18%
August 5, 1981 .....	88.91
November 5, 1981 .....	89.53
February 5, 1982 .....	90.06
May 5, 1982 .....	90.50
August 5, 1982 .....	90.88
November 5, 1982 .....	91.17
February 5, 1983 .....	91.39
May 5, 1983 .....	91.54
August 5, 1983 .....	91.62
November 5, 1983 .....	91.62
February 5, 1984 .....	91.54
May 5, 1984 .....	91.40
August 5, 1984 .....	91.18
November 5, 1984 .....	90.90
February 5, 1985 .....	90.54
May 5, 1985 .....	90.11
August 5, 1985 .....	89.62
November 5, 1985 .....	89.06
February 5, 1986 .....	88.43
May 5, 1986 .....	87.74
August 5, 1986 .....	86.99
November 5, 1986 .....	86.17
February 5, 1987 .....	85.29
May 5, 1987 .....	84.35
August 5, 1987 .....	83.34
November 5, 1987 .....	82.28
February 5, 1988 .....	81.16
May 5, 1988 .....	79.98
August 5, 1988 .....	78.75
November 5, 1988 .....	77.47

\* If the period of time from the first day of the Term for any particular Unit to the date upon which the Event of Loss for such Unit occurs is less than three years, is three years or more but less than five years, or is five years or more but less than seven years, the Stipulated Loss Value set forth in the above Schedule will be increased by 19.23%, 12.82% or 6.41% of the Purchase Price for such Unit, respectively.

<u>Lease Payment Date</u>	<u>Stipulated Loss Value *</u>
February 5, 1989.....	76.13%
May 5, 1989.....	74.73
August 5, 1989.....	73.29
November 5, 1989.....	71.80
February 5, 1990.....	70.25
May 5, 1990.....	68.66
August 5, 1990.....	67.02
November 5, 1990.....	65.34
February 5, 1991.....	63.60
May 5, 1991.....	61.82
August 5, 1991.....	59.99
November 5, 1991.....	58.12
February 5, 1992.....	56.19
May 5, 1992.....	54.23
August 5, 1992.....	52.22
November 5, 1992.....	50.16
February 5, 1993.....	48.07
May 5, 1993.....	45.93
August 5, 1993.....	43.75
November 5, 1993.....	41.52
February 5, 1994.....	39.25
May 5, 1994.....	36.95
August 5, 1994.....	34.61
November 5, 1994.....	32.24
February 5, 1995.....	29.84
May 5, 1995.....	27.42
August 5, 1995.....	24.97
November 5, 1995.....	22.49
February 5, 1996.....	20.00

- \* If the period of time from the first day of the Term for any particular Unit to the date upon which the Event of Loss for such Unit occurs is less than three years, is three years or more but less than five years, or is five years or more but less than seven years, the Stipulated Loss Value set forth in the above Schedule will be increased by 19.23%, 12.82% or 6.41% of the Purchase Price for such Unit, respectively.

**EXHIBIT A**  
**Deliveries and Fundings**

Prior to February 5, 1981 .....	864 Units
February 5, 1981 .....	52 Units
March 5, 1981 .....	<u>100 Units</u>
	1,016 Units